1. OPEN MEETING
2. ROLL CALL
3. MINUTES
   A. 09/26/2022, ZBA Meeting Minutes
4. AGENDA REVIEW AND APPROVAL
5. ZBA BUSINESS
   A. AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027 (postponed from 8/22/2022 meeting)
      The petitioner is seeking 8 variances from Zoning Ordinance #78
      Article VI, Section 6.04, Zoned R-3
      1. A 10.25-ft. front yard setback variance from the required 30-ft., to build a house with a deck 19.75-ft. from the front property line (lakeside).
      2. A 17-ft. rear yard setback variance, from the required 35-ft., to build a house 18-ft. from the rear property line (Cushing St.).
      3. A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (north).
      4. A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (south).
      5. Revised - A 10.18-ft. 1.63-ft height variance from the required 30-ft. to build a house 40.18-ft 31.63-ft high.
      6. 14.85% lot coverage variance from the required 25% for a total lot coverage of 39.85%.
      Article XXVII, Section 27.02(A)(4)
      7. 8-ft. side yard setback variances for retaining walls to be 0-ft. from the property lines, north & south.
      Article XXVII, Section 27.17(B)
      8. A 5.25-ft. wetland setback variance, front the required 25-ft., to build a house with a deck 19.75-ft. from a wetland (lake).
   B. AB-2022-30, Adam Martin, 2936 Saturn Dr., 09-20-453-024
      The petitioner is seeking 3 variances from Zoning Ordinance #78 - Zoned R-2
      Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05 (H)(2)
      1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
      2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
      3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.
   C. AB-2022-31, Ken Backus, 2911 Walmsley Circle, 09-20-452-013
      The petitioner is seeking 3 variance from Zoning Ordinance #78 - Zoned R-2
      Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05 (H)(2)
      1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
      2. A 10-ft. rear yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
      3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.
D. **AB-2022-32, Mike Humbert, 2917 Walmsley Circle, 09-20-452-012**

The petitioner is seeking 3 variances from Zoning Ordinance #78 - Zoned R-2 Article XXVII, Section 27.02 (A)(4) & Article XXVII, Section 27.05(H)(2)

1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

6. **PUBLIC COMMENTS**
7. **COMMUNICATIONS**
8. **COMMITTEE REPORTS**
9. **MEMBER COMMENTS**
10. **ADJOURNMENT**

*In the spirit of compliance with the Americans with Disabilities Act, individuals with a disability should feel free to contact Penny S. Shults, Clerk, at (248) 391-0304, ext. 4001, at least seventy-two hours in advance of the meeting to request accommodations.*
The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, September 26, 2022, at 7:00 pm at the Orion Township Municipality Complex Board Room, 2323 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:
Dan Durham, Chairman
Tony Cook, Vice-Chairman
Mike Flood, BOT Rep to ZBA
Don Walker, PC Rep to ZBA
Diane Dunaskiss, Board member

ZBA MEMBERS ABSENT:

CONSULTANT PRESENT:
Lynn Harrison, Planning and Zoning Specialist

OTHERS PRESENT:
Ed Gergosian
Rick Morrow
Brenda Skrzucki
Joey Aitus
Eugene McNabb
Kathleen Jacob
Judy Nickerson
Michael Pudalski
Cindy Jacob
Gary Skrzucki
Tim Finney
Gene McNabb

1. OPEN MEETING
Chairman Durham called the meeting to order at 7:00 pm.

2. ROLL CALL

3. MINUTES

A. 08-22-22, ZBA Regular Meeting Minutes

Trustee Flood moved, seconded by Board member Dunaskiss, to approve the 08-22-2022 minutes as presented.

Roll Call Vote was as follows: Cook, yes; Walker, yes; Flood, yes; Dunaskiss, yes; Durham; yes. Motion passes 5-0.

4. AGENDA REVIEW AND APPROVAL

Trustee Flood moved, seconded by Chairman Durham, to approve the agenda as presented.

Vote was as follows: Cook, yes; Flood, yes; Dunaskiss, yes; Walker, yes; Durham, yes. Motion passes 5-0.
5. **ZBA BUSINESS**

A. **AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027**

Board member Dunaskiss recused herself from this case as she has a financial interest in this case.

**Trustee Flood moved, seconded by Vice-chairman Cook, to approve the recusal of Board member Dunaskiss because of her conflict of interest and that she should come back to sit on the Board when this case is done.**

**Vote was as follows: Walker, yes; Cook, yes; Flood, yes; Durham, yes. Motion passes 4-0.**

Chairman Durham read the petitioner's request as follows:

The petitioner is seeking 8 variances from Zoning Ordinance #78

Article VI, Section 6.04, Zoned R-3
1. A 10.25-ft front yard setback variance from the required 30-ft., to build a house with a deck 19.75-ft. from the front property line (lakeside).
2. A 17-ft. rear yard setback variance, from the required 35-ft., to build a house 18-ft. from the rear property line (Cushing St.).
3. A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (north).
4. A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (south).
5. **Revised** A 1.63-ft. height variance from the required 30-ft. to build a house 31.63-ft. high.
6. 14.85% lot coverage variance from the required 25% for a total lot coverage of 39.85%.

Article XXVII, Section 27.02(A)(4)
7. 8-ft. side yard setback variances for retaining walls to be 0-ft. from the property lines, north & south.

Article XXVII, Section 27.17(B)
8. A 5.25-ft. wetland setback variance, from the required 25-ft., to build a house with a deck 19.75-ft. from a wetland (lake).

Mat Dunaskiss provided a statement. He stated that since the last time that the Board met, they have made significant changes. The lot is all staked and given the unique characteristics of the home being made out of concrete, he felt that the Board would probably have questions for Dave Goodloe. Since Mr. Goodloe cannot be at this meeting, he suggested that the case be postponed two weeks so they could make a complete presentation at that future date, October 10, 2022.

**Trustee Flood moved, seconded by Vice-chairman Cook, in the matter of AB -2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027 at the applicant’s request, due to numerous circumstances, to postpone this case until October 10, 2022.**

**Vote was as follows: Flood, yes; Walker, yes; Cook, yes; Durham, yes. Motion passes 4-0.**

Board member Dunaskiss returned to the Board.
B. AB-2022-37, Northern Sign Company for Allstate, 3048 W. Clarkston Rd., 09-08-376-017

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 1 variance from sign ordinance #153 – Section 7 Non-Residential wall signs

1. A variance for 1 wall sign over the allowed 1 wall sign for a total of 2 wall signs totaling 19.13-sq. ft.

No applicant appeared for this case.

Board member Walker moved, seconded by Board member Dunaskiss, to move this case to the end of the agenda since the applicant is not here at this time in case of weather or traffic issues.

Vote was as follows: Cook, yes; Flood, yes; Dunaskiss, yes; Walker, yes; Durham, yes. Motion passes 5-0.

C. AB-2022-38, Kathleen Jacob & Richard Morrow, 454 Shorewood Ct., 09-03-405-007

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-3

Article VI, Section 6.04

1. An 8.42-ft. side yard setback variance from the required 10-ft. for a second story addition to be 1.58-ft. from the property line (northeast).

2. An 8.42-ft. side yard setback variance from the required 10-ft. for a deck addition to be 1.58-ft. from the property line (northeast).

3. A 2.17-ft. side yard setback variance from the required 10-ft. for a porch to be 7.83-ft. from the property line (northwest).

Mr. Morrow and Ms. Jacob introduced themselves and summarized the variance request for setback variances to construct an addition to their 600 square foot home. They presented signatures from the neighbors within 300 feet of their property approving their request. Ms. Jacob provided pictures to the Board showing other variances that were approved.

Ms. Jacob explained the aerial that she handed out showing other homes in the area that have variances.

Trustee Flood stated that the Fire Marshall has no concern with the variance request. The lake lot has a practical difficulty due to the shape of the lot.

Chairman Durham asked what the ending square footage would be.

Mr. Morrow answered that the home is currently 602 square foot and they are proposing to add approximately 700 square feet.

Chairman Durham confirmed that it is a modest size.

Ms. Jacob explained the setback variances requested.

Mr. Morrow stated that the house was built in 1941 and they are not changing the footprint.
Trustee Flood confirmed the approval from the neighbors that the Board members received.

Vice-chairman Cook asked if you are facing the home, the addition is on the right side.

Ms. Jacob stated that the 8 foot variance on the side is for the extension of the existing porch.

Trustee Flood stated that they are not asking for a setback variance on the water side.

Chairman Durham commented that this applicant is going from really small to moderate. The neighbor support is important. He read the addresses that were provided to the Board members in support of the variances: 445 Sherwood Court, 362 Sherwood Court, 406 Sherwood Court, 512 Fernhurst Court, 384 Sherwood Court, 350 Sherwood Court and 422 Sherwood Court.

Board member Dunaskiss moved, seconded by Trustee Flood, in Case AB-2022-38, Kathleen Jacob & Richard Morrow, 454 Shorewood Ct., 09-03-405-007, that the petitioner's request for 3 variances from Zoning Ordinance #78 – Zoned R-3, Article VI, Section 6.04 including an 8.42-ft. side yard setback variance from the required 10-ft. for a second story addition to be 1.58-ft. from the property line (northeast), an 8.42-ft. side yard setback variance from the required 10-ft. for a deck addition to be 1.58-ft. from the property line (northeast) and a 2.17-ft. side yard setback variance from the required 10-ft. for a porch to be 7.83-ft. from the property line (northwest) be granted because the petitioner did demonstrate the following standards for variances have been met in this case and that they set forth facts that show:

1. The petitioner does show the following practical difficulty: the wedge shaped lot makes it very difficult to conform to the setbacks to even build an addition to make a modest home.

2. The following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in this same district or zone: this home was built in 1941 and was probably built as a cottage and is extremely small as a home, 600+ square feet. This addition will create a modest sized home.

3. The variance is necessary for the preservation and enjoyment of a substantial property right posed by others in the same zone or vicinity based on the following facts: they are adding a bedroom and in order to enjoy this home, they need an additional bedroom and to make additional space to make this a livable space.

4. The granting of the variance or modification will not be materially detrimental to public welfare or materially injurious to the property or to the improvements in such zone or district in which the property is located.

5. Granting this variance would not impair an adequate supply of light or air to adjacent properties, it would not unusually increase congestion on public streets. There is also not going to be an increase of fire, or endanger public safety, and is not going to reasonably diminish or impair established property values within the surrounding area, or in any other respect, impair public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Trustee Flood asked for public comment.

No public comment was heard.

Roll call vote was as follows: Dunaskiss, yes; Cook, yes; Walker, yes; Flood, yes; Durham, yes. Motion passes 5-0.

Chairman Durham read the petitioner’s request as follows:

The petitioner is seeking 2 variances from Zoning Ordinance #78 – Zoned R-1

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

1. A 10-ft. side yard setback variance from the required 10-ft., for a 6-ft. privacy fence to be 0-ft. from the property line to the west.

2. A 10-ft. side yard setback variance from the required 10-ft., for a 6-ft. privacy fence to be 0-ft. from the property line to the east.

Mr. Mike Adams introduced himself to the Board and summarized the variance request to retain an existing fence on his property.

Chairman Durham asked about the encroachment of the driveway.

Mr. Adams stated that the homeowner that was in the neighboring lot when he purchased the home told Mr. Adams that it was encroaching and he would move the driveway back over to the appropriate property. Then, this lot was sold to someone else and he heard nothing else about the fence.

Chairman Durham asked if Mr. Adams had spoken to the current property owner about moving the fence because this is something that could be explored.

Mr. Adams stated that the driveway is on his property but he has not approached the property owner.

Chairman Durham stated that the zoning is R-1 and this makes him wonder why construction equipment is being stored there. He asked when the fence went up.

Mr. Adams stated that it has been a work in progress, it started in the summer of 2022.

Chairman Durham asked about the low area in the swamp.

Mr. Adams replied that it is an everyday swamp and it is not regulated and he has never seen it fully dried up.

Board member Walker stated that he did not drive on the property because of all of the existing signage. He noticed that the fence is erected on both sides of the property. He asked if it goes back to the back of the property.

Mr. Adams replied yes, almost.

Trustee Flood asked what was the practical difficulty and why would a 4 foot fence not work in this case.

Mr. Adams replied that there is a situation with topography because the house sits higher and if it was 4 foot, it would not be sufficient.
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Trustee Flood stated that he doesn’t see the practical difficulty in this case. He confirmed that the applicant has owned the property for two years.

Vice-chairman Cook stated that although the applicant is in violation, he appreciates the good side of the fence facing out. He commented on his walk through the property. He asked if Mr. Adams had noticed erosion issues. This has nothing to do with the height but the fence is affecting the natural flow of water.

Mr. Adams stated that they did have a surveyor come out to determine where the house would sit and they have not yet had final grade on the property.

Chairman Durham asked for public comment.

Mr. Gary Skrzucki commented that people usually come to the Board to ask for permission but Mr. Adams just went and put up a fence structure consisting of 5 different kinds of fencing materials. The applicant brought in truckloads of sand and stripped all vegetation from the hill and around the pond. There is a regulator for the pond and it is on his property. Mr. Adams has not met the neighbors and has not taken any interest in what anyone has to say. He doesn’t want to look at an eyesore and described the neighborhood and properties that he owns. The wildlife cannot get through because now there is a border fence. He is asking that the motion be denied.

Chairman Durham asked if DNR has ever been involved in the regulation of the pond on the property.

Mr. Skrzucki stated that the pond has been on the property for 25-30 years. He described the regulator that is on his property. He described the lake that the property is located on. The fence is an abomination.

Mrs. Skrzucki explained her history of living on the property.

Chairman Durham stated that this case is not the only case of someone coming in after the fact.

Ms. Judy Nickerson explained her history with her property. She noticed the fence going up without any discussion or explanation. She explained the erosion that is happening now on her property. The fence in question is allowing a lot of erosion onto her property and she explained. This is the first time she is seeing the neighbor putting up the fence. She described concrete on her property which she doesn’t want there. She asked that the variances be denied. She described construction vehicles that are on the subject property. She expressed her other concerns about erosion and development of this lot.

Chairman Durham stated that the only thing that the Board is considering is a 6 foot fence on the property line.

James Flosh expressed concerns about the variance request. He stated that the fence is hideous looking and doubts if it will make it through the winter. Every Sunday morning there is semi-automatic firing going on and he has called the police about the shooting. He is against the variance request.

Chairman Durham asked what the sheriff found out.

Mr. Flosh replied that they didn’t stop. They would drive down the road and the shooting would stop.

Gene McNabb stated that the gunshots are coming from his father’s property and the sheriff’s department said there are no issues with it. He has concerns about the amount of fill coming into the subject property and he explained how much fill is allowed by ordinance. He has concerns about the applicant’s treatment of the pond in the back and he approached the Board with pictures. He also has a concern about the
applicant’s fence being on his property. He referred to the pictures that he provided and how they showed his concerns.

Eugene McNabb expressed his concerns about the development of the subject property.

Tim Finney expressed his opposition to the variances requested because it would disrupt the natural patterns and abundance of wildlife.

Trustee Flood stated that the concerns expressed by the public are civil matters. He confirmed the request that is before the Board and he outlined the options for the applicant as per ordinance. The Board has nothing to do with what or how the fence is constructed.

Board member Walker asked Mr. Adams if he intends on living on this property. Mr. Adams replied yes.

Vice-chairman Cook asked the applicant about his comment in the application as to that he thought it was okay to put up a 6 foot fence. He asked the applicant why he thought it was okay.

Mr. Adams replied that he talked to someone in zoning and planning before they do anything, and after the discussion, he thought the biggest issue was the distance from the road. This is why they have the wrought iron on the road side.

Vice-chairman Cook moved, Supported by Trustee Flood, in Case AB-2022-39, Michael Adams, 2901 Judah Rd., 09-32-400-007, that the petitioner’s request for 2 variances from Zoning Ordinance #78 – Zoned R-1, Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2) including a 10-ft. side yard setback variance from the required 10-ft., for a 6-ft. privacy fence to be 0-ft. from the property line to the west and a 10-ft. side yard setback variance from the required 10-ft., for a 6-ft. privacy fence to be 0-ft. from the property line to the east be denied because the petitioner did not demonstrate that the following standards for variances have been met in this case and that they set forth facts that show:

1. The petitioner does not show practical difficulty. In terms of the practical difficulty - there are unique things about the property but there is nothing unique about the applicant needing a 6-foot fence.

2. The following are not exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in this same district or zone: this is an area where most of the lots are long and deep, covered in woods, and there are a variety of topographic heights that vary throughout that entire district of Judah.

3. The variance is not necessary for the preservation and enjoyment of a substantial property right possessed by others in the same zone or vicinity based on the following facts: Mr. Adams did mention that there is a pole that he could see, but there is no particular eyesore that describes the need for a 6-foot fence.

4. The granting of the variance or modification will be materially detrimental to the public welfare or materially injurious to the property or to the improvements in such zone or district in which the property is located based upon the fact that they have had some discussion that has nothing to do with the fence height but there are some concerns about erosion and water and other materials running off the property.

5. Granting this variance would impair an adequate supply of light or air to the adjacent properties, it would not unusually increase congestion on public streets. There was also some concern about endangering public safety by having the fence there. The variance is not going to reasonably
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diminish or impair established property values within the surrounding area, or in any other respect, impair public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Roll call vote was as follows: Walker, yes; Dunaskiss, yes; Flood, yes; Cook, yes; Durham, yes. Motion passes 5-0.

E. AB-2022-40, Courtney Markoff, 805 Merritt, 09-11-351-004

Chairman Durham read the petitioner's request as follows:

The petitioner is seeking 1 variance from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.01(C)(1)(b)

1. A 2.92-ft. side yard setback variance from the required 8-ft., for a house addition with an attached garage to be 5.08-ft. from the property line to the north.

Mr. Ed Gergosian introduced himself and summarized the variance request for a two car attached garage.

Trustee Flood commented that the Fire Marshall has no issues with the request. This lot meets the lot coverage, etc. in the ordinance and the only request is the setback.

Vice-chairman Cook asked the height of the structure and he asked if Mr. Gergosian was the builder.

Mr. Gergosian replied that he doesn't know the height and no, he is the business manager for Ms. Markoff. He described what his company does.

Vice-chairman Cook asked about the exterior of the building.

Mr. Gergosian replied that Ms. Markoff will make sure that the design will fit the neighborhood.

Vice-chairman Cook asked about the existing gate that is not very well maintained.

Mr. Gergosian replied that the gate will go away.

Chairman Durham asked if there was any public comment.

No public comment was heard.

Trustee Flood asked how old the house is.

Mr. Gergosian replied late 1950’s or 1960’s.

Vice-chairman Cook commented that the property was purchased in the last two years.

Mr. Gergosian agreed.

Board member Walker moved, and Vice-chairman Cook supported, in Case AB-2022-40, Courtney Markoff, 805 Merritt, 09-11-351-004 that the petitioner’s request for 1 variance from Zoning Ordinance #78 – Zoned R-2, Article XXVII, Section 27.01(C)(1)(b) for a 2.92-ft. side yard setback variance from the required 8-ft., for a house addition with an attached garage to be 5.08-ft. from the property line to the north be granted because the petitioner did demonstrate the follow standards for variances have been met in this case and that they set forth facts that show:
1. The petitioner does show the following practical difficulty: this variance request is due to the unique characteristics of this property and not related to the general conditions of the area of the property and the purchaser bought the property about two years ago and because of the septic and the well configurations, this is the most convenient thing to do to improve the house addition along with the attached garage.

2. The variance is necessary for the preservation and enjoyment of a substantial property right posed by others in the same zone or vicinity based on the following facts.

3. Granting of the variance or modification will not be materially detrimental to public welfare or materially injurious to the property or to the improvements in such zone or district in which the property is located.

Roll call vote was as follows: Flood, yes; Walker, yes; Cook, yes; Dunaskiss, yes; Durham, yes. Motion passes 5-0.

F. AB-2022-37, Northern Sign Company for Allstate, 3048 W. Clarkston Rd., 09-08-376-017

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 1 variance from sign ordinance #153 – Section 7 Non-Residential wall signs

1. A variance for 1 wall sign over the allowed 1 wall sign for a total of 2 wall signs totaling 19.13-sq. ft.

Mr. Justin Moore, Northern Sign Company, introduced himself and summarized the variance request for increased signage due to the fact that the insurance agent at the existing agency is changing.

Trustee Flood recalled a previous variance for the front ground sign. He asked what the practical difficulty is.

Mr. Moore stated that there is an existing sign on the building now that is in disrepair and will be removed. All of the parking is at the rear of the building and the rear entrance, where the new sign is proposed to be, will be the most used entrance.

Chairman Durham asked about the window signage on the back of the building and its removal.

Mr. Moore stated that the agent information is changing.

Board member Walker asked about the existing ground sign and the proposed wall signs.

Mr. Moore stated that the ground sign will remain but will exist of just the Allstate logo. The agent is requesting that he keep the wall sign above the main entrance and the second wall sign will be on the rear of the building by the entrance.

Board member Walker asked if the only business was the Allstate business.

Mr. Moore replied yes.

Board member Walker stated that he doesn’t understand why they need another sign on the back of the building.

Chairman Durham confirmed that the monument sign will have a change of copy. The Board is only looking at the two wall signs being asked for.

Ms. Harrison replied yes.
Vice-chairman Cook asked if the sign by the door is considered a wall sign.

Ms. Harrison replied yes.

Board member Walker confirmed that it is the fact that there are two and not one.

Vice-chairman Cook asked about the new signage.

Mr. Moore answered that there is a new sign proposed to replace the existing sign. Neither of the wall signs are illuminated. He provided the existing signage plan to the Board members for clarification.

Trustee Flood stated that even with the two signs, they would still be in compliance as far as total square footage.

Mr. Moore concurred.

Chairman Durham asked for public comment.

No public comment was heard.

Vice-chairman Cook moved, supported by Trustee Flood, in Case AB-2022-37, Northern Sign Company for Allstate, 3048 W. Clarkston Rd., 09-08-376-017 that the petitioner's request for 1 variance from sign ordinance #153 – Section 7 Non-Residential wall signs for a variance for 1 wall sign over the allowed 1 wall sign for a total of 2 wall signs totaling 19.13-sq. ft. be granted because the petitioner did demonstrate the follow standards for variances have been met in this case and that they set forth facts that show:

1. The petitioner does show the following practical difficulty: the petitioner has one variance that was previously granted for the monument sign in the front and the additional sign being requested measures 1 foot, 3 inches by 2 foot, 6 inches which still keeps the total square footage under the allowable.

2. The following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in this same district or zone: this is a business that is nestled between two residential properties and the road that it is on has a speed limit of 45 miles per hour so signage is going to be important for its visibility.

3. The variance is necessary for the preservation and enjoyment of a substantial property right posed by others in the same zone or vicinity based on the following facts: the speed limit in this area is around 45 miles per hour and it is highly unusual where this business is located.

4. Granting of the variance or modification will not be materially detrimental to public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located.

5. Granting this variance would not impair an adequate supply of light or air to adjacent properties, it would not unusually increase congestion on public streets and, in fact, it should improve it due to making the business more visible. There is also not going to be an increase of fire, or endanger public safety, nor reasonably diminish or impair established property values within the surrounding area, or in any other respect, impair public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Roll call vote was as follows: Cook, yes; Dunaskiss, yes; Walker, yes; Flood, yes; Durham, yes. Motion passes 5-0.
6. PUBLIC COMMENTS

Mr. Gene McNabb commented that the green sticker on a newly constructed fence is concerning and he explained. He asked where someone can go to get a copy of Ordinance #99 and he explained his concerns about the amount of fill dirt. The Township needs to look into who is passing out the green stickers and why they will not enforce Ordinance #99.

Mr. Eugene McNabb stated that when the previous applicant was doing the work on Judah Road, he had a dozen people out there that could not speak English. He expressed his concerns about the number of family members living in the proposed new home.

7. COMMUNICATIONS

8. COMMITTEE REPORTS

Trustee Flood commented on the Fence Ad-Hoc Committee and a presentation to the Planning Commission is the next step.

9. MEMBER COMMENTS

Chairman Durham stated that each member was provided a copy of the approved Zoning Board of Appeals By-Laws.

Board member Walker commented on the successful recent book sale at the Library.

10. ADJOURNMENT

Moved by Board member Dunaskiss, seconded by Chairman Durham, to adjourn the meeting at 8:30 pm.

Vote was as follows: Durham, yes; Cook, yes; Flood, yes; Dunaskiss, yes; Walker, yes. Motion passes 5-0.

Respectfully submitted,

Erin A. Mattice
Recording Secretary
MEMORANDUM

TO: Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Specialist

DATE: October 4, 2022

SUBJECT: Staff Report for AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027 for 9/26/2022 ZBA Meeting

This case was postponed from the August 22, 2022 and September 26, 2022 meetings.

The applicants provided additional information and reduced the height of the proposed house which is reflected in the documents that were provided for the September 26th meeting.

Also, in the September 26th documents is a review from the Fire Marshal dated September 21, 2022. If you have any questions, regarding Fire Marshal William’s review, please call him directly. You may also call Building Official Goodloe at ext. 6001 with questions. Please remember to disclose any information obtained from a call to either Fire Marshal Williams or Building Official Goodloe.

Please let me know if you have any questions.
Documents From September 26, 2022 ZBA Meeting
MEMORANDUM

TO: Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Specialist

DATE: September 19, 2022

SUBJECT: Staff Report for AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027 for 9/26/2022 ZBA Meeting

This case was postponed from the August 22, 2022 ZBA meeting (minutes attached).

The applicants have reduced the height of the house by 1.5-ft. to 2-ft. per floor which reduced the total height of the house from 40.18-ft. to 31.63-ft. or a variance of 1.63-ft. Nothing else has changed.

We asked Mr. Smilanic to provide measurements from grade to the midpoint of the roof from 3 points along all four sides of the proposed house and to calculate that average which is how the 31.63-ft. height was arrived at. Attached is the email with those measurements and copies of the revised plans.

Please let me know if you have any questions.
A. AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027

Chairman Durham explained that Board member Dunaskiss recused herself from this case and Ms. JoAnn VanTassel will replace her on the Board during the hearing of this case.

Chairman Durham read the petitioner’s request as follows:

The petitioner is seeking 8 variances from Zoning Ordinance #78

Article VI, Section 6.04, Zoned R-3
1. A 10.25-ft front yard setback variance from the required 30-ft. to build a house with a deck 19.75-ft. from the front property line (lakeside).
2. A 17-ft. rear yard setback variance, from the required 35-ft., to build a house 18-ft. from the rear property line (Cushing St.).
3. A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (north)
4. A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (south).
5. A 10.18-ft. height variance from the required 30-ft. to build a house 40.18-ft. high.
6. 14.85% lot coverage variance from the required 25% for a total lot coverage of 39.85%.

Article XXVII, Section 27.02(A)(4)
7. 8-ft. side yard setback variances for retaining walls to be 0-ft. from the property lines, north & south.

Article XXVII, Section 27.17(B)
8. A 5.25-ft. wetland setback variance, from the required 25-ft., to build a house with a deck 19.75-ft. from a wetland (lake).

Trustee Flood moved, supported by Chairman Durham, that in the matter of ZBA case AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027, to postpone until the September 26, 2022, ZBA meeting at the petitioner’s request.

Roll Call Vote was as follows: Kerby, yes; Flood, yes; Van Tassel, yes; Walker, yes; Durham; yes. Motion passes 5-0.


The petitioner is seeking 2 variances from Zoning Ordinance #78 – Zoned R-1
Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

1. A 10-ft. side yard setback variance from the required 10-ft. for a 6-ft. privacy fence to be 0-ft. from the side property line to the south.
2. A 10-ft. rear yard setback variance from the required 10-ft. for a 6-ft. privacy fence to be 0-ft. from the rear property line to the west.

Chairman Durham confirmed that the applicant requested to be postponed until October 24, 2022.

David Plunkett, Attorney, representing Tom Williams who owns property adjoining the petitioner. He expressed frustration about the extension of this case and the fact that the petitioner gets to keep the fence up which is in blatant violation of the zoning ordinance with a portion of the fence on his client’s property and needs to be removed. They have asked the petitioner to remove the violating portion of the fence. This is a costly and a frustrating situation.
Hi Lynn,

I have changed the 2 heights that you have asked for. If it's not too late to put the height variance back in, I would like to add it back in for 1'-7-1/2". To the midpoint of my house it is now 31'-7-1/2".
Starting front of the northeast corner of the house and working counter clockwise here are the measurements:
22'-0" 22'-0" 22'-0"
Southside of house
22'-0" 28'-0" 42'-0"
East side of house
42'-0" 42'-0" 42'-0"
North side of house
42'-0" 31'-6" 22'-0"
Total 379'-6"
Divide by 12 = 31'-7-1/2"

Pete
303-419-7815

On Sep 7, 2022, at 12:45 PM, Lynn Harrison <lharrison@oriontownship.org> wrote:

Thank you – we would still like to see the 12 measurements which can be prepared just like the one in email/memo form provided in “Dropbox” recently. Also, do you want us to add back in a variance for height or will you be modifying the plans to come in under the 30-ft.?
To: Zoning Board of Appeals  
From: Jeff Williams, Fire Marshal  
Re: AB-2022-36, Dunaksiss Case  
Date: 9/21/2022

The Orion Township Fire Department has completed its review of Application AB-2022-36 for the limited purpose of compliance with Charter Township of Orion Ordinance’s, Michigan Building Code, and all applicable Fire Codes.

Based upon the application and documentation provided, the Fire Department has the following recommendation:

Approved
X Approved with Comments (See below)
Not approved

Comments:

Granting of Height Variance: After consultation with the Township Attorney and review of the drafted attorney opinion letter received on 9/16/2022 the Fire Department has the following understanding at this time.

- Orion Township Ordinance #78 calculates the “General Height” of a structure by taking measurements from multiple areas around the building, dividing those measurements up which then gives an overall range of height. By following Ordinance #78 the applicant is seeking a 1ft 7 ½ inch height variance.
- Orion Township Ordinance #146 calculates height by the distance between the grade plan and the highest roof surface noted on a plan. By following Ordinance #146 / International Fire Code this gives the structure a measurement of 49 ½ ft in height. Per International Fire Code if this measurement exceeds 30ft in height the structure shall have an approved aerial access drive 26ft in width that is in the proximity of the structure. The intent of this drive is to allow for ladder truck access and operations in the event of an emergency. It shall be noted the applicant is seeking a height variance and proposing to build this structure on an access road has limited widths measuring 12’ wide.
- After consultation of the Township Attorney and review of the drafted opinion letter it is the fire departments understanding at this time that Ordinance #78 takes precedence over such height measurements making the structure 1ft 7 ½ inches out of compliance of Ordinance #78.
- With this information it shall be noted that the fire department still has areas of concern in regards life safety, property conservation and our departments inability to conduct aerial operations on an access drive that is non-compliant with International Fire Code.

If there are any questions, the Fire Department may be reached at 248-391-0304 ext. 2004.

Sincerely,

Jeffrey Williams  
Jeff Williams, Fire Marshal  
Orion Township Fire Department
MOTION OPTIONS

TO: Charter Township of Orion Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Specialist

DATE: September 19, 2022

RE: AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027 (Postponed from 8/22/2022 meeting)

I am providing motion options for the above-mentioned case.

Please consider and deliberate on each of the criteria listed which the applicant should meet in order for their request to be approved. These are known as the Findings of Fact and need to be included in a motion for either approval or denial. Any additional Findings of Facts should be added to the motion.

The variance language listed was verified by the petitioner/applicant and advertised to the public. As a reminder - due to the language being advertised, the ZBA may lessen the requested deviation(s) but cannot grant more than what was advertised.

If you have any questions regarding the case, please give me a call at the Township ext. 5001.
SAMPLE MOTION FOR

APPROVAL OF A NON-USE VARIANCE

In the matter of ZBA case # AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027 (Postponed from 8/22/2022 meeting), I would move that the petitioner’s request for:

8 variances from Zoning Ordinance #78Article VI, Section 6.04, Zoned R-3

1. A 10.25-ft front yard setback variance from the required 30-ft., to build a house with a deck 19.75-ft. from the front property line (lakeside).
2. A 17-ft. rear yard setback variance, from the required 35-ft., to build a house 18-ft. from the rear property line (Cushing St.).
3. A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (north)
4. A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (south).
5. Revised - A 40.18-ft. 1.63-ft. height variance from the required 30-ft. to build a house 40.18-ft. 31.63-ft. high.
6. 14.85% lot coverage variance from the required 25% for a total lot coverage of 39.85%.

Article XXVII, Section 27.02(A)(4)

7. 8-ft. side yard setback variances for retaining walls to be 0-ft. from the property lines, north & south.
   Article XXVII, Section 27.17(B)

8. A 5.25-ft. wetland setback variance, from the required 25-ft., to build a house with a deck 19.75-ft. from a wetland (lake).

be granted because the petitioner did demonstrate that the following standards for variances have been met in this case in that they set forth facts which show that in this case:

1. The petitioner does show the following Practical Difficulty (Defined: Due to unique characteristics of the property and not related to general conditions in the area of the property):

   _______________________________________________________________________
   _______________________________________________________________________
   _______________________________________________________________________

2. The following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone:

   _______________________________________________________________________
   _______________________________________________________________________
   _______________________________________________________________________
3. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts:

4. The granting of the variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following findings:

Further, based on the following findings of facts, the granting of this variance would not:

1. Impair an adequate supply of light and air to adjacent property due to:

2. Unreasonably increase the congestion in public streets due to:

3. Increase the danger of fire or endanger the public safety due to:

4. Unreasonably diminish or impair established property values within the surrounding area due to:
5. Or, In any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
SAMPLE MOTION FOR

DENIAL OF A NON-USE VARIANCE

In the matter of ZBA case #AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027 (Postponed from 8/22/2022 meeting), I would move that the petitioner’s request for:

8 variances from Zoning Ordinance #78 Article VI, Section 6.04, Zoned R-3

1. A 10.25-ft front yard setback variance from the required 30-ft., to build a house with a deck 19.75-ft. from the front property line (lakeside).
2. A 17-ft. rear yard setback variance, from the required 35-ft., to build a house 18-ft. from the rear property line (Cushing St.).
3. A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (north)
4. A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (south).
5. Revised - A 40.18-ft. 1.63-ft. height variance from the required 30-ft. to build a house 40.18-ft. 31.63-ft. high.
6. 14.85% lot coverage variance from the required 25% for a total lot coverage of 39.85%.

Article XXVII, Section 27.02(A)(4)
7. 8-ft. side yard setback variances for retaining walls to be 0-ft. from the property lines, north & south.

Article XXVII, Section 27.17(B)
8. A 5.25-ft. wetland setback variance, from the required 25-ft., to build a house with a deck 19.75-ft. from a wetland (lake).

be denied because the petitioner did not demonstrate that the following standards for variances have been met in this case in that they set forth facts which show that in this case:

1. The petitioner does not show Practical Difficulty due to (Defined: Due to unique characteristics of the property and not related to general conditions in the area of the property):

2. The following are not exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone:
3. The variance is *not* necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts:

4. The granting of the variance or modification will *be* materially detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following findings:

Further, based on the following findings of facts, the granting of this variance would:

1. Impair an adequate supply of light and air to adjacent property due to:

2. Unreasonably increase the congestion in public streets due to:

3. Increase the danger of fire or endanger the public safety due to:

4. Unreasonably diminish or impair established property values within the surrounding area due to:
5. Or, in any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
Documents from August 22, 2022 ZBA Meeting
MEMORANDUM

TO: Zoning Board of Appeals
FROM: Lynn Harrison, Planning & Zoning Specialist
DATE: August 11, 2022
SUBJECT: Staff Report for AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, Vacant Parcel on Cushing St.

The parcel measures approximately 70-ft. at its widest point and is .140 acres or 6,098-sq. ft. The applicants are seeking variances to build a new home with an attached garage on the property.

The lake side of the property is being considered the front and the roadside the rear.

Because the property measures approximately 63-ft. at the front setback – there is a relaxed side yard setback from 10-ft. to 8-ft.

Per the applicants, the property slopes drastically towards the lake and will require the retaining walls shown on the plans. The retaining walls are proposed to be on or near the property lines on both the north and south sides.

Township Zoning Ordinance #78 measures the height of a house at its mid-point by measuring 3-points along each side of the house from ground level to the mid-point of the roof (see attached diagram) and using the average of those measurements to determine the mid-point height. The height measurements of the house, due to the placement of the house as it relates to the slope of the land, varies on each side for a total mid-point height of 40.18-ft. – the measurements used to come with this calculation was provided by the applicant (attached).

Please let me know if you have any questions.
To find the midpoint of the roof you measure from the start of the roof to the peak. Half of that measurement is the midpoint.

Take the 2 Measurements on all sides of the home and average to get the Height of the Home.

To find the midpoint of the roof you measure from the start of the roof to the peak. Half of that measurement is the midpoint.
5. Regarding the height - I still need to know the actual height of the house to its mid-point (the number of stories is not an issue as originally discussed). We measure that by taking 3 measurements on all 4 sides of the house - 1 at each corner and 1 in the middle all measured from the grade at the point of measurement and then take the average of those 12 numbers to come up with the height. I attached an illustration that may help. The height of the home will be 40' 2" at its mid-point. This house will have a flat roof so the measurement comes from the top of the 3' 6" parapet wall on the top of the roof. Which is the highest part of the house. The actual height of the house would only be 29' 6" on a flat lot, but with the extreme drop on this property of 28' it makes it very hard to stay in the 30' requirement.

Front of house. 29' 6" on the right side. 29' 6" in the middle. 29' 6" on the left side.
Right side of house. 29' 6" on the front right side. 34' 6" middle of right side. 52' 6" back of house on the right side.
Back of house. 52' 6" on the left side. 52' 6" in the middle. 52' 6" on the right side.
Left side of house. 29' 6" on the front left side. 37' 9" middle of left side. 52' 6" back of house on the left side.

Pete
303-419-7815

From: Rison Construction <risonconstruction@hotmail.com>
Sent: Friday, July 22, 2022 7:01 PM
To: Pete Smilanic <pete@scdcorpfdn.com>; Nancy Smilanic <nancysmilanic@me.com>
Subject: Fwd: Parcel 2 Cushing Street

Hi

This needs to be answered ASAP - Please see below.

They need all information by Tuesday to submit to the paper.

The earlier the better so if they need further clarification, we can get to them.

Thanks

Marcy

Sent from my Verizon, Samsung Galaxy smartphone
Get Outlook for Android

From: Lynn Harrison <lharrison@oriontownship.org>
Sent: Friday, July 22, 2022, 4:27 PM
To: Michael Riddle <risonconstruction@hotmail.com>
Subject: Parcel 2 Cushing Street

Hi Mike, I am reviewing the variances for the above parcel with Tammy and she pointed out a few things I need to clarify before I can come with the final language.

1. Although you are declaring the lake side as the front – the front setback is still measured from the roadside (as that will be the address) and when we measure 30-ft from that line, the property width is about 63-ft. so therefore the side yard setback is 8-ft. instead of 7-ft. I apologize for the misinformation.
NOTICE TO APPLICANT:
The following application must be completed and filed with the Township at least thirty days prior to a scheduled ZBA meeting in order to initiate an appeal. There is a non-refundable fee of $250.00 for a residential application.

Regular meetings of the ZBA are held on the second and fourth Mondays of each month at 7:00 p.m. at the Orion Township Hall, 2323 Joslyn Road, Lake Orion, Michigan 48360. A minimum of three cases are required in order to hold a meeting with a maximum of five. The applicant or a representative with written permission from the property owner must be present at the meeting.

PROOF OF OWNERSHIP MUST BE INCLUDED WITH THIS APPLICATION. Acceptable forms of documentation include: Warranty Deed, Quit Claim Deed, Land Contract, or Option to Purchase with a Copy of the Warranty Deed.

APPLICANT
Name: Mat Dunaskiss + Pete/Nancy Smilanic
Address: 535 Cushing Rd
Phone: (248) 790-1343
Email: mat@dunaskiss.biz

PROPERTY OWNER(S)
Name(s): Mat + Diane Dunaskiss
Address: 535 Cushing Rd
Phone: (248) 790-1343
Email: mat@dunaskiss.biz

CONTACT PERSON FOR THIS REQUEST
Name: Mike Riddle
Phone: (248) 318-9584
Email: risonconstruction@hotmail.com

SUBJECT PROPERTY
Address: Lot 2 Cushing Street
Sidwell Number: 09-03-278-027

Total Acreage: ___________ Length of Ownership by Current Property Owner: ___ Years, ___ Months

Does the owner have control over any properties adjoining this site? Yes [ ] No [x]

Zoning Ordinance
Allowance/Requirement __________________________________________________________________________ Deviation requested
Case #: ________________

**RESIDENTIAL VARIANCE**

1. Describe in detail the nature of the request: ________________________________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________

2. Describe how the request results from special or unique circumstances particular to the property, which are not applicable to other properties in the surrounding area: __________________________________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________

3. If the appeal is granted, please explain how the variance will/will not be materially detrimental to the public health, safety and welfare, or to other properties or improvements in the Township: __________________________________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________

4. Explain how the request is not consistent with other properties in the immediate area, please site examples if possible: __________________________________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________

5. Describe how the alleged practical difficulty has not been self-created: __________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________

6. The topography of said land makes the setbacks impossible to meet because: ________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________

7. Describe how strict compliance with the ordinance unreasonably prevents the owner from using the property for a permitted purpose, or to be unnecessarily burdensome: ________________________________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________

Please see Attached Answers
1. Asking for a variance because of the narrow width of the lot and steep grades. We are asking for the following:

   HOUSE/STRUCTURE:
   - A 10.25’ variance on the front side (lake side) (19.75’ from the house to the property line vs 30’ required)
   - A 17’ variance on the rear side (road side) (18’ from the house to the property vs 35’ required)

2. The lot is approximately 57.20’ wide by 104.91’ feet deep. Because of this, we need adequate space for a driveway at the road side for safe parking.

3. If this appeal is granted, it will reduce parking in the street and conform to normal parking. It will also be a positive impact to the community and surrounding neighbors because of the proposed home we would like to construct on the lot.

4. It appears that this lot is in uniform with neighboring lots and how the homes were constructed on that street as well as other areas on the lake - This will conform with the rest of the lake and neighborhood.

5. A new lot was created and approved. Because of the grades, width and depth of the property, we are respectfully asking for a variance so that we may build a home on this lot. We intend to meet, exceed and conform to the other structures around the lake.

6. Because of the depth of the lot, the narrow width of the lot and the steep grades, the setbacks are impossible to meet.

7. Strict compliance with the ordinance unreasonably prevents the owner from using the property because due to the grades, width and depth of the property, we would have lack of space to build an adequate sized home and provide safe parking.
Case #: __________________

8. Have there been any previous appeals involving this property? If so, when? ________________________________

9. Is this request the result of a Notice of Ordinance Violation? ☐ Yes ☐ No

I/We, the undersigned, do hereby request action by the ZBA on the variance or specified matter above, in accordance with Sections 30.06, 30.07, 30.08, 30.10, and 30.11 of the Zoning Ordinance. In support of this request the above facts are provided. I hereby certify that the information provided is accurate and the application that has been provided is complete. As the property owner (or having been granted permission to represent the owner as to this application), I hereby grant the Zoning Board of Appeals members permission to visit the property, without prior notification, as is deemed necessary.

Signature of Applicant: ___________________________ Date: ____________
(must be original ink signature) Mat Dunaskiss

Print Name: Mat Dunaskiss

Signature of Property Owner: ___________________________ Date: ____________
(must be original ink signature) Mat Dunaskiss

Print Name: Mat Dunaskiss

If applicable: I the property owner, hereby give permission to Mike Riddle to represent me at the meeting.

OFFICE USE ONLY

Zoning Classification of property: ___________________________ Adjacent Zoning: N. S. E. W. ___________________________

Total Square Footage of Principal Structure: ___________________________ Total Square Footage of Accessory Structure(s): ___________________________

Description of variance(s):

______________________________________________________________________________________________________________________________________________________________

Date Filed: ___________________________ FeePaid: ___________________________ Receipt Number: ___________________________
Article VI  Single Family Residential: R-1, R-2 & R-3

Section 6.04 – Area and Bulk Requirements  (amended 01.05.87, 02.17.04, 02.07.05, 07.16.18)

Please see the Matrix Chart in Section 6.01 for variations to these requirements by use.

<table>
<thead>
<tr>
<th></th>
<th>R-1</th>
<th>R-2</th>
<th>R-3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Lot Area</td>
<td>14,000 sq. ft.</td>
<td>10,800 sq. ft.*</td>
<td>8,400 sq. ft.*</td>
</tr>
<tr>
<td>Minimum Width of Lot</td>
<td>100 ft.</td>
<td>80 ft.</td>
<td>70 ft.</td>
</tr>
<tr>
<td>Minimum Lot Setbacks</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(in feet)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Front Yard**</td>
<td>40 ft.</td>
<td>35 ft.</td>
<td>30 ft.</td>
</tr>
<tr>
<td>Each Side Yard***</td>
<td>10 ft.</td>
<td>10 ft.</td>
<td>10 ft.</td>
</tr>
<tr>
<td>Rear Yard</td>
<td>35 ft.</td>
<td>35 ft.</td>
<td>35 ft.</td>
</tr>
<tr>
<td>Minimum Floor Area/Unit</td>
<td>1,320 sq. ft.</td>
<td>1,080 sq. ft.</td>
<td>960 sq. ft.</td>
</tr>
<tr>
<td>Maximum Lot Coverage</td>
<td></td>
<td></td>
<td>25%</td>
</tr>
<tr>
<td>Total Maximum Floor Area of All Accessory Buildings</td>
<td>See Section 27.02, A, 8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Height of Structures</td>
<td>30 ft.</td>
<td>30 ft.</td>
<td>30 ft.</td>
</tr>
</tbody>
</table>

*In those instances where public sewers are not provided, a minimum lot area of 12,500 sq. ft. shall be provided.
** Where the front setbacks of two (2) or more principal structures in any block (in the case of platted properties) or within three hundred (300) feet (in the case of unplatted properties) in existence at the time of passage of this Ordinance, within the district zoned and on the same side of the street, are less than the minimum front setbacks required herein, then any building subsequently erected within said block (or three hundred (300) feet) shall not be less and not be greater than the average depth of the front setbacks of the existing structures.
*** Where a garage door or opening faces a side lot line, said side lot setback shall be thirty (30) feet.

Section 6.05 – Sign Regulation  (amended 10.08.98, 02.21.06)

All signs shall comply with the standards set forth in Orion Township Sign Ordinance No. 153.

Section 6.06 – Tree Preservation Regulations  (amended 08.03.00)

The tree removal permit requirements apply to developments in these Districts, according to the terms of Section 27.12.

Section 6.07 – Wetland Setbacks  (added 09.17.07)

The wetland setback requirements apply to developments in this District, according to the terms of Section 27.17.
construction on the rebuilding project is begun and diligently carried on within a reasonable time after the excavation, demolition, or removal of the theretofore existing building.

K. Administrative Nonconformities.

A structure or use which is administratively nonconforming shall remain nonconforming until special approval has been granted pursuant to application submitted to the proper authority. Where special approval has been granted, such a structure or use shall be deemed conforming. However, where special approval has been denied, such structure or use shall be considered nonconforming on the basis for which the application for special approval was denied.

L. Change in Tenancy or Ownership.

In the event there is a change in tenancy, ownership or management of an existing nonconforming use or structure, such nonconforming use or structure shall be allowed to continue pursuant to the terms of this Ordinance regarding such nonconformities.

M. Special Exceptions.

Any use for which a special exception is permitted, as provided in this Ordinance, shall not be deemed a nonconformity.

Section 27.02 – Buildings, Structures, and Uses

A. Accessory Buildings, Structures and Uses. (amended 02.17.04)

1. An accessory building, structure or use shall not be located on a parcel unless there is a principal building, structure, or use already located on the same parcel of land.

2. An accessory building or structure shall not be constructed prior to the commencement of construction of the principal building or structure or the establishment of the principal use.

3. A building, structure or use which is accessory to a single-family dwelling and attached to it shall, for the purposes of location and setbacks, be considered part of the principal building.

4. A building, structure or use which is accessory to a single-family dwelling and detached from it shall meet the same front and side yard setback requirements as the principal structure, as set forth in the applicable zoning district of this Ordinance. However, the minimum rear yard setback shall be ten (10) feet for all detached accessory buildings. All accessory buildings and structures shall be included in the computation of total maximum area of all accessory buildings, and together with the principal building or structure shall not exceed the percentage of lot coverage requirements. (amended 07.16.10)

5. Detached accessory buildings or structures in non-residential districts shall conform to the height requirements for the principal building or structure, as set forth in the applicable zoning district, except as specifically permitted otherwise in this Ordinance. However, detached accessory buildings or structures in non-residential districts that exceed the height of the principal building or structure, as constructed, shall not be located in the front yard. (amended 07.16.18)

Detached accessory buildings or structures in residential districts shall not exceed the height of the principal building or structure as constructed. However, the height of a detached accessory building or structure may exceed the height of the principal building or structure, if said accessory building or structure is located at least one hundred fifty (150) feet distant and to the rear of the principal building or structure. In no case shall the height of a detached accessory building or structure exceed the maximum height requirement for the principal building or structure, as set forth in the applicable zoning district, except as specifically permitted otherwise in this Ordinance. (amended 07.16.18)
Section 27.17 - Wetland Setbacks (added 09.17.07)

A. It is the intent of this section to require a minimum setback from wetlands (or natural features), and to regulate property within such setback in order to prevent physical harm, impairment and or destruction of or to a natural feature or the surrounding area. It has been determined that, in the absence of such a minimum setback, intrusions in or onto natural features would occur, resulting in harm, impairment and/or destruction of natural features contrary to the public health, safety and general welfare. This regulation is based on the police power, for the protection of the public health, safety and welfare, including the authority granted in the zoning enabling act. It is further the purpose of this section to establish and preserve minimum setback from wetlands (or natural features) in order to recognize and make provision for the special relationship, interrelationship and interdependency between the natural feature and the setback area in terms of: spatial relationship, interdependency in terms of physical location, plant and animal species, over land and subsurface hydrology, water table, water quality, and erosion of sediment deposition.

It is further the purpose of this section to provide for protection, preservation, proper maintenance and use of areas surrounding wetlands (or natural features) in order to minimize disturbance to the area and to prevent damage from erosion and siltation, a loss of wildlife and vegetation, and/or from the destruction of the natural habitat. A setback shall be maintained in relation to all areas defined in this chapter, unless, and to the extent, it is determined to be in the public interest not to maintain such setback.

B. Setbacks. For all wetlands as defined in Article II of this ordinance and by Ordinance No. 107, setbacks for all structures, parking lots, streets or driveways shall be in accordance with the following regulations:

<table>
<thead>
<tr>
<th>Required Setbacks</th>
</tr>
</thead>
<tbody>
<tr>
<td>All structures or buildings</td>
</tr>
<tr>
<td>All decks</td>
</tr>
<tr>
<td>Parking lots</td>
</tr>
<tr>
<td>Streets, roads, driveways</td>
</tr>
</tbody>
</table>

C. Waivers. The Planning Commission has the discretion to decrease the above required setbacks upon demonstration of the appropriateness of a lower setback and compliance with one (1) or more of the following criteria:

1. Demonstrated habitat preservation.
2. Demonstrated water quality preservation.
3. Demonstrated storm water quality retention.
4. Existence of a legal lot of record.

For development projects adjacent to wetlands which are not reviewed by the Planning Commission, the Building Official shall have authority to issue setback waivers subject to the criteria as listed above. Appeal to the Zoning Board of Appeals, in accordance with Section 30.06, may also be sought.

Section 27.18 - Wind Energy Conversion Systems (added 02.01.10)

A. Intent. It is the intent of the Charter Township of Orion to promote the effective and efficient use of Wind Energy Conversion Systems (WESC) by regulating the siting, design, and installation of such systems to protect the public health, safety, and welfare. In no case shall this ordinance guarantee any wind rights or establish access to the wind.

B. Approval Required - Except where noted in this Section, it shall be unlawful to construct, erect, install, alter, or locate any WESC project within the Charter Township of Orion unless approval for a:

1. Private WECS: A permit has been obtained from the Building Department as an accessory use and subject to Section 27.02 and the height restrictions of Section 28.02. Only one (1) Private WECS shall be permitted per parcel, and the private WECS shall not be allowed within a front yard area.

2. Commercial WECS: A special land use has been obtained pursuant to Section 30.02 and this Section.

Charter Township of Orion Zoning Ordinance 78
Revised 07/26/18
54
REAR ELEVATION? Lakeside is front
Finish grade to top of property wall: 21'-10".
Main level floor to top of property wall: 34'-6".
Lynn Harrison

From: Jeff Williams
Sent: Tuesday, August 9, 2022 11:20 AM
To: Debra Walton; Tammy Girling; Lynn Harrison
Cc: Robert Duke; John Pender
Subject: FW: Residential ZBA Documents for the August 22, 2022, ZBA Meeting

The Fire Department has reviewed the 3 proposed cases and has no concerns at this time regarding case numbers AB-2022-34 and 35.

Case number AB-2022-36 shows the construction of a residential structure measuring 41’6” in height. The location and height of this proposed residential building is an area of extreme concern regarding life safety, property conservation, and limits our ability to conduct firefighting tactics if this building were to catch on fire.

It is the fire department recommendation to the ZBA that height variance listed as #5 NOT be granted.

If you should need anything further, please let me know

Jeffrey Williams, CFPS – Fire Marshal
Orion Township Fire Department - Fire Prevention
3365 Gregory Road Lake Orion, MI 48359
Fax: 248.309.6993

From: Debra Walton <dwalton@oriontownship.org>
Sent: Monday, August 1, 2022 11:31 AM
To: Jeff Williams <jwilliams@oriontownship.org>
Subject: Residential ZBA Documents for the August 22, 2022, ZBA Meeting

Attached are three ZBA residential cases that needs to be reviewed by you for the August 22, 2022, ZBA meeting.

Thanks,

Debra Walton
Clerk
Planning & Zoning
2323 Joslyn Road, Lake Orion, MI 48360
O: 248.391.0304, ext. 5002
W: www.oriontownship.org
Lynn,

After receiving the public hearing notice listing the proposed variances and reviewing the plan drawings with the lot owners, including Mr. Pete Smilanic, on Saturday we believe that this project would:

1) fit in and conform with the home we’re planning to build starting later this year.

2) enhance the property values within our surrounding area.

Please provide this letter in support to the ZBA Board members for their consideration at the August 22, 2022 meeting.

Please also reply to confirm that you received this e-mail.

Thanks in advance and best regards,

Mark & Adele Muench
Lot 3-Cushing Street
Orion Township, MI 48362
Hi Lynn,
My wife and I reviewed the plans with the lot 2 owners (Pete Smilanic) on Saturday August 13th and support the variances being requested. We feel that the home will fit in nicely on the lot and will increase the surrounding property values. Please share this letter with the ZBA Board members for the upcoming meeting on August 22. If you have any questions please let me know. Thanks.

Steve & Nicole Oja
Lot 2-Cushing Street
Orion Township, MI 48362
Cell# 313-318-0589
MEMORANDUM

TO: Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Coordinator

DATE: October 4, 2022

SUBJECT: Staff Report for AB-2022-30, 31, and 32

_________________________________________________________________

ZBA Case AB-2022-30, Adam Martin, 2936 Saturn Dr.; Case AB-2022-31, Ken Backus; 2911 Walmsley Circle; and Case AB-2022-32, Mike Humbert, 2917 Walmsley Circle were postponed from the August 8, 2022 ZBA Meeting (Minutes Attached).

To date, the applicants have not provided any additional information.

Please contact me if you have any questions.
CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS  
***** MINUTES *****  
REGULAR MEETING – MONDAY, August 8, 2022 – 7:00 PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, August 8, 2022, at 7:00 pm at the Orion Township Municipality Complex Board Room, 2323 Joslyn Road, Lake Orion, Michigan 48360.

**ZBA MEMBERS PRESENT:**  
Dan Durham, Chairman  
Tony Cook, Vice-Chairman  
Mike Flood, BOT Rep to ZBA  
Don Walker, PC Rep to ZBA  
Diane Dunaskiss, Board member  

**CONSULTANT PRESENT:**  
David Goodloe, Building Official

**OTHERS PRESENT:**  
Ted Adams  
Christi Adams  
Adam Martin  
Lori Martin  
Kenneth Backus  
Mike Humbert  
Catherine Bako  
Kris Baker

1. **OPEN MEETING**  
Chairman Durham called the meeting to order at 7:00 pm.

2. **ROLL CALL**

3. **MINUTES**  
   A. **07-25-22, ZBA Regular Meeting Minutes**

   Board member Dunaskiss moved, seconded by Chairman Durham, to approve the 07-25-2022 minutes as presented.

   Roll Call Vote was as follows: Dunaskiss, yes; Cook, yes; Walker, yes; Flood, yes; Durham; yes. Motion passes 5-0.

4. **AGENDA REVIEW AND APPROVAL.**  
   Trustee Flood moved, seconded by Chairman Durham, to approve the agenda as presented.

   Vote was as follows: Flood, yes; Walker, yes; Cook, yes; Dunaskiss, yes; Durham, yes. Motion passes 5-0.

5. **ZBA BUSINESS**  
   A. **AB-2022-29, Theodore & Christi Adams, 2922 Saturn Dr., 09-20-453-023**

   Chairman Durham read the petitioners request as follows:

   The petitioner is seeking 4 variances from Zoning Ordinance #78 – Zoned R-2
Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Article XXVII, Section 27.17(B)
4. A 25-ft. wetland setback variance from the required 25-ft. to erect a 6-ft. privacy fence (structure) 0-ft. from a wetland.

Mr. Ted Adams and Christi Adams introduced themselves.

Chairman Durham stated that the Fire Department has no concerns with any of the cases on the agenda for tonight’s meeting. The Board received two letters. The first was from Mark Tarquini, 2823 Waring Place, Director of Keatington Homeowner’s Association, in support for the 6-foot height variance and the setback variances requested for the properties along Waldon Road and Chairman Durham listed all property addresses that the letter supports. The second letter was received from a neighbor expressing concerns and comments regarding the request for height and setback variances for fences along Waldon Road.

Mr. Adams summarized the variance request. They would like the 6-foot fence because of privacy and safety concerns.

Ms. Adams stated that when they purchased the home, they were told that a 6-foot fence was being paid for and put up by the Homeowner’s Association but after they moved it, they found out that this was false information. She explained what they have done up to this point to alleviate their concerns. They tried putting up a wood wall, but this was not effective. They also planted vegetation and the trees did not thrive and were not effective. When they heard about the fences that were placed on Baldwin Road, they thought this was their opportunity.

Chairman Durham asked if the traffic on Waldon Road has increased since they purchased the home.

Mr. Adams and Ms. Adams replied that it has definitely gotten busier, both traffic and pedestrian.

Ms. Adams expressed concerns over motorist stopping and trespassing on her property. People that walk along the path can see right into their home and a 4-foot fence could simply be looked over and would not provide privacy.

Chairman Durham asked how 2 more feet would help.

Ms. Adams replied that it would deter someone from hopping over the fence. If someone wanted to remove something from their property, it would be harder to take it over a 6-foot fence. When they have a 6-foot fence, it is more difficult to see a passing walker on the path.

Chairman Durham stated that he is concerned about a fence going into a wetland setback.

Mr. and Mrs. Adams explained that they have had individuals park and go onto their property to fish.
Trustee Flood asked if she had called the police.

Ms. Adams explained that she was afraid of repercussions.

Trustee Flood explained that the petitioner was actually asking for a site plan change because they are asking to replace a split rail fence that was part of the original site plan approval. He stated that they have a problem with 6 feet fences in the township. He thinks this is a Homeowner's Association problem.

Ms. Adams stated that there is a lot more truck traffic on the road now.

Trustee Flood commented on traffic problems on Baldwin Road. He reiterated that this is a Homeowner's Association problem because they are changing the site plan for the development. He thinks this should be worked out through planning and zoning.

Ms. Adams commented that they had listened to other meetings as to the fact that each was a case-by-case basis and she understood that this was the meeting that they should attend. She stated that for them to pay the money and then you say that they should go to the Homeowners Association, this does not seem fair.

Trustee Flood stated that he will base his decision on the practical difficulty. He believes that a 4-foot fence will suffice, and he explained.

Ms. Adams stated that the view is fine now, it is worse during the winter months.

Trustee Flood asked if the petitioner had informed the Homeowner’s Association about what is going on.

Ms. Adams stated that if someone comes down Waldon and enters the ice, they are supposed to call the Homeowner’s Association.

Trustee Flood commented on beach access in the area. He is not in favor of any 6-foot fence in the Township.

Chairman Durham asked for public comment.

Mark Rossi stated that he was the first one that was approved for a fence on Waldon Road. This petitioner’s case is amplified because of their proximity to the lagoon. The security issue is huge. He commented in the changes in the Township over the years. This petitioner is worse than his case because they have constant traffic, sound, etc. The quality of life that is affected by the changes in the Township affect them more drastically. The four-foot fence will not suffice, and a 6-foot fence is more secure and he commented on the visual aspect of having a barrier. His quality of life has increased since he was able to put up the fence.

Ms. Adams stated that they are willing to work with the Township if there is a setback issue. There isn’t anything they can do about the water’s edge.

Mr. Adams commented on the large tree on his property and explained that he would like the fence to go on the side of the tree.

Chairman Durham asked if they have considered greenery.
Ms. Adams commented that they had planted 14 evergreens and 3 lived.

Chairman Durham asked if the trees withholding the sun belong to the petitioner.

Mr. Adams and Ms. Adams stated that they do not know.

Trustee Flood stated that it would depend on the road right of way on Waldon Road.

Board member Walker stated that they can have a 6-foot fence if they move it in.

Ms. Adams stated that they asked for the setbacks so the neighbor’s fences and their fence would touch without a 10-foot gap. They understand that they can put a 6-foot fence 35 foot from Waldon Road, but they did not want to lose 35 feet.

Mr. Adams stated that that would probably be within their beach.

Board member Walker stated that he voted for Mr. Rossi’s fence but that was the last one. The problem is, they need a practical difficulty that goes with the land. He understands the changes that the Township has experienced but they would have to find practical difficulty with every case. He thinks this is the wrong solution. The right solution is to change the ordinance. He also is concerned with the wetland issue. They are asking for a variance against the wetland’s ordinance.

Ms. Adams stated that there is a split rail fence, and they want to put the 6-foot fence in the same location.

Chairman Durham asked Building Official Goodloe about the need to find practical difficulty with each case.

Building Official Goodloe stated that they are looking for unique circumstances that apply to the property.

Ms. Adams explained her concerns about someone drowning on her property and not being able to do anything about it.

Chairman Durham stated that how does the petitioner know where the people coming into their property are coming from.

Ms. Adams replied that they visually see the majority of them coming from Waldon Road.

Board member Dunaskiss asked if a berm could be built on the property line.

Building Official Goodloe replied yes, as long as it does not affect property drainage to adjacent properties.

Board member Dunaskiss asked if they could build a berm and put the 4-foot fence on top of the berm.

Building Official Goodloe answered yes.
Board member Dunaskiss stated that she shares the concern about the 6-foot fences. It is not the kind of look that is attractive in a community. She shares some of the same concerns with Trustee Flood. There are many trees on the property that are mature and not necessarily healthy and a lot of overgrowth preventing new greenery from being healthy. There is no point to keeping split rail fence. She suggested putting up a berm and putting a 4-foot fence on top and they could make it attractive. It would be safe and would help with visibility. She feels that this is a concern for the Homeowner’s Association, and they should share the burden. She asked if they could look at other alternatives and work with the Association to come up with a plan.

Ms. Adams stated that she can investigate this. Her practical difficulty is worse than Mr. Rossi. The Board is telling them one standard and then they are changing the meaning of practical difficulty.

Chairman Durham stated that they are looked at on a case-by-case basis. The former cases are approved. Each case should be looked at separately. He commented on the availability of coming on the property prior to tonight’s meeting and how that might not be possible with a stockade fence.

Board member Dunaskiss asked if a 4-foot fence would keep the people out of the wetland area.

Ms. Adams replied no.

Mr. Adams commented on what it would look like if he put up a berm and a 4-foot fence and the neighbors put up something different. In his opinion, this would not be appealing at all.

Building Official Goodloe stated that when you are dealing with dimensional variances, he read from a document from MSU. He stated that this document says, “if the circumstances upon which a variance is warranted is shared among numerous properties in the same zone, the variance request should be denied.” It is because it is not particular to that property. If they held the problem of noise to a standard, then everyone could qualify for a variance. This is a bigger issue for the subdivision. When the ZBA grants a variance, it stays with the property. Dogs and disputing neighbors are not a practical difficulty. If it what is being asked for is shared among all the neighbors along Waldon Road, it is not particular to one specific property.

Vice-chairman Cook stated that he is not a fan of 6-foot fences at all. He is trying to come up with a practical difficulty. After he heard what Building Official Goodloe read, it is a commonality among neighbors. When you add the wetland issue, there is a reason why we have a wetland ordinance. He is trying to find a reason why this is unique and is not able to.

Mr. Adams stated that they are the only one along Waldon Road that someone can walk on the property and drown.

Chairman Durham stated that this is a blanket request from several residents. Mr. Adams brought up the issue of being on the water. He suggested that anyone looking to get an ordinance change can make a presentation to the Township Board.

Trustee Flood stated that right now they have a committee that is supposed to be addressing this problem.

Building Official Goodloe stated that anyone can apply at the Clerk’s Office to amend an ordinance. There is an application for that.
Ms. Adams asked who decides how that happens.

Trustee Flood replied the Township Board.

Chairman Durham explained the options to the petitioners.

Mr. Adams stated that he is okay coming back 5 feet, but he cannot do that at the water’s edge.

Chairman Durham stated that this would require them to ask to be postponed and come back to the Board with different measurements and drawing and try again.

Building Official Goodloe stated that they could request a lesser variance.

Chairman Durham commented that they would not be able to provide hard numbers at tonight’s meeting in moving the fence 5 feet.

Board member Walker stated that if the petitioner agrees to move their fence in and the neighbors did not agree to move their fence in, the fences will not line up. They have to think about what it would look like overall.

Building Official Goodloe stated that this is exactly why this is not unique to this property, it also involves the neighbors.

Trustee Flood stated that tomorrow, the petitioners could put a 4-foot line all the way down their property line along Waldon Road and it would be perfectly legal. It is the homeowner’s choice.

Building Official Goodloe stated that he would have to review the wetland area because this is different.

Trustee Flood stated that the Township already has one there. If someone climbs over the fence, that is their fault.

Board member Walker commented that he did not know a resident could fill out a form to change the ordinance, he has never heard of that.

Trustee Flood stated that for anything to be put on a Township Board Agenda, it must be approved.

Board member Walker asked if this item has come before the Board before.

Building Official Goodloe commented on another ordinance amendment that went before the Board.

Trustee Flood stated that they are working to get the Committee back together to get this resolved. The way the ordinance is set up now, if they have two front yards, it is 35 feet setback for this case. The Homeowner’s Association needs to address this. If they get denied, they have recourse to go to Oakland County Circuit Court.

Chairman Durham asked for additional public comment.
Charter Township of Orion Zoning Board of Appeals Minutes
Regular Meeting – August 8, 2022

Mr. Ken Backus commented on his history of living in the Township. He lives across the canal from the petitioner. He is in favor of the things that the petitioner has presented. He commented on the big trucks that unload at Kroger and that could be a reason for a 6-foot fence. If he had a taller fence, which would reduce the sound being heard. He suggested that if they survey random residents in a mile radius and ask them about the attractiveness of the fences on Baldwin as compared to the fences along Waldon Road. He believes the fences on Baldwin Road are much more attractive.

Mr. Adam Martin, neighbor, pointed out that the petitioner has an attractive nuisance. People that drive down the road and they see access to the water. The unique detriment that the petitioner has is that it is so easy and inviting for individuals to feel that they have access to that space. It is not known that this is personal property, so people assume that it is public property. Out of all the fence cases, theirs is the most unique.

Ms. Adams stated that they cannot put a berm along the wetlands because it would be an EGLE issue.

Chairman Durham asked for final comments.

Mr. Adams asked for a vote on what was presented.

Ms. Adams stated that their unique hardship is people are able to come onto their property and access the water.

Board member Walker moved, and Vice-chairman Cook supported, in the matter of ZBA Case AB-2022-29, Theodore & Christi Adams, 2922 Saturn Dr., 09-20-453-023 that the petitioner’s request for variances from Article XXVI, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2) including a 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.; a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east; a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west and a variance from Article XXVII, Section 27.17(B) for a 25-ft. wetland setback variance from the required 25-ft. to erect a 6-ft. privacy fence (structure) 0-ft. from a wetland be denied because the petitioner did not demonstrate that the following standards for variances have been met:

The petitioner did not demonstrate practical difficulty in that from the discussions we had with the petitioner, these concerns that the petitioner has does not run, with the possible exception of the water issue. The issues of noise, too many people and trespassing are issues that are known everywhere and all of these things apply to all residents of the Township. It is not practical difficulty due to ownership of that particular property.

Roll call vote was as follows: Dunaskiss, yes; Cook, yes; Walker, yes; Flood, yes; Durham, yes. Motion passes 5-0.

B. AB-2022-30, Adam Martin, 2936 Saturn Dr., 09-20-453-024

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2
Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Mr. Martin introduced himself and summarized the variance request. He would like to postpone his case so he could come up with a practical difficulty.

Trustee Flood moved, and Chairman Durham supported, at the applicant’s request to postpone ZBA Case AB-2022-30, Adam Martin, 2936 Saturn Drive, 09-20-453-024, to October 10, 2022.

Roll call vote was as follows: Walker, yes; Dunaskiss, yes; Flood, yes; Cook, yes; Durham, yes. Motion passes 5-0.

Mr. Pat Kaputo stated that he has vegetation along his property and commented that this vegetation is very difficult to maintain. The practical difficulty argument makes no sense, and it makes perfect sense for these residents. It is only a very small percentage of residents of Orion Township who live along Waldon Road. He commented on the increased traffic in the area, the shopping center that was not there when they moved in, the roundabout, and the church. He commented on the weeds along the safety path. He commented on other neighbors that have come before the Board for a fence. The Board doesn’t understand how this affects these neighbors’ everyday lives. The Township needs to take care of things in a timely manner.

Chairman Durham stated that practical difficulty is part of the Enabling Legislation.

Mr. Kaputo answered that he is aware, but he questioned the definition of it that the Board is using. He commented on the garbage behind Kroger. He urged the Board to listen to the petitioners.

C. AB-2022-31, Ken Backus, 2911 Walmsley Circle Dr., 09-20-452-013

Chairman Durham read the petitioner’s request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. rear yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Mr. Ken Backus introduced himself.

Chairman Durham explained the options for the petitioner.

Trustee Flood asked if the Homeowner’s Association will address this. The fences are the Association’s boundary lines and are the Homeowners Association’s problem.
Board member Dunaskiss moved, and Trustee Flood supported, in the matter of ZBA Case AB-2022-31, Ken Backus, 2911 Walmsley Circle Dr., 09-20-452-013 that this request, at the petitioner’s request, be postponed until October 10, 2022.

Roll call vote was as follows: Flood, yes; Walker, yes; Cook, yes; Dunaskiss, yes; Durham, yes. Motion passes 5-0.

D. AB-2022-32, Mike Humbert, 2917 Walmsley Circle Dr., 09-20-452-012

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Mr. Mike Humbert introduced himself to the Board and asked for postponement of his case.

Trustee Flood moved, and Board member Dunaskiss supported, in the matter of ZBA Case AB 2022-32, B-2022-32, Mike Humbert, 2917 Walmsley Circle Dr., 09-20-452-012 at the applicant’s request to postpone this case until October 10, 2022.

Roll call vote was as follows: Cook, yes; Dunaskiss, yes; Walker, yes; Flood, yes; Durham, yes. Motion passes 5-0.

Chairman Durham urged petitioners that were postponed at tonight’s meeting, come back to the next meeting with some new information. They can contact the Township, Building Department and he asked them to use the time they were given to research new information.

Building Official Goodloe stated that he would gladly meet with any of the petitioners to look for their practical difficulty.

E. AB-2022-33, Catherine Baker, 2933 Walmsley Circle Dr., 09-20-381-004

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.
Ms. Catherine Baker introduced herself and her son to the Board. She provided pictures to the Board. She stated that a lot of her concerns involve privacy so anyone can see into their yard. A 4-foot fence doesn’t work. She likes the idea of vegetation, but it is a lot to keep up and things die off. She described the existing vegetation in her yard and the road right of way. She described safety concerns and privacy concerns that she has for her property. She doesn’t understand why the fence is such an issue.

Chairman Durham stated that the 6-foot fence is prohibited by ordinance.

Trustee Flood stated that they can put up a 6-foot fence, 35 feet off the lot line.

Ms. Baker replied that they wouldn’t have any back yard left.

Mr. Baker stated that this is why they are asking for the variance.

Trustee Flood stated that this is why the ordinance needs to be addressed.

Mr. Baker stated that the Board has the power to approve the variance so therefore, they are trying to push it on someone else.

Chairman Durham asked for public comment.

Mr. Rossi stated that the rules have changed since he was approved. They have people that have received approval along Baldwin Road and now everything has changed on how the Board is looking at it. He suggested that the Board work on what they want from the Homeowner’s Association so that they can present it to the President and try to get it done. The Association is not concerned with the perimeter of the property that involves a small percentage of people in the development.

Trustee Flood asked if they should contact Building Official Goodloe.

Building Official Goodloe stated that they should talk to Tammy Girling, Planning and Zoning Director, to find out if it was a PUD or a site plan for this development. They need to find out if the development would consider putting a fence around the perimeter.

Trustee Flood commented that hopefully they can work this out without getting lawyers involved.

Ms. Adams stated that she watched the videos of the people who got approved for the fences. Vice-chairman Cook suggested that they get a group together for conformity. She surveyed the group and got the neighbors together and now she feels responsible for all the monies spent. She felt that they were doing what they were supposed to do and now they are telling them to do something different. Something should have been said before all the time and money was wasted.

Ms. Baker explained how she decided to go to the Board for a variance. She reiterated her concerns about safety and privacy.

Building Official Goodloe stated that having two front yards can be considered a practical difficulty. He stated that 10 foot is the minimum setback off a regular rear yard. He suggested she think about this and the topography of the yard when appealing to this Board. He suggested that they look for a compromise.

Ms. Baker explained her property difficulties.

Building Official Goodloe suggested that the petitioner put this all together and come back. None of the practical difficulties were on the application. He suggested that the petitioner look at the uniqueness of their properties.
Building Official Goodloe suggested that the applicants read the minutes from the meetings where the fences were approved. This Board can only look at what they are presented in the application and what they are presenting here. The Board can only vote on what goes with the land.

Chairman Durham explained the options to the applicant.

Ms. Baker explained all the effort that she has put in so far. She does not want to postpone.

Vice-chairman Cook asked what she has done in terms of planting vegetation.

Ms. Baker stated that she planted 10 of the emeralds and all of them died. She explained the problems with the vegetation in her yard.

Mr. Baker explained that the Black Walnut trees on the other side release a toxin inhibiting other plants to grow so it is impossible to get things to grow on that side.

Trustee Flood asked who owns the road right of way.

Building Official Goodloe replied that he doesn’t know.

Trustee Flood stated that he would like clarification. He believes that it is an Oakland County right of way.

Ms. Baker expressed her concern about the vegetation in the road right of way. She reiterated her privacy and safety concerns. She does not think a 4-foot fence is sufficient.

Chairman Durham asked for public comment.

Mr. Kaputo commented on the vegetation in the area and the pathways in the area. He commented on the neighborhood plan and the visibility of the subject parcel.

Ms. Baker reiterated her safety concerns.

Mr. Baker reiterated why a 4-foot fence would not help with their privacy concerns.

Board member Dunaskiss moved, and Vice-chairman Cook supported, in the matter of ZBA Case AB-2022-33, Catherine Baker, 2933 Walmsley Circle Dr., 09-20-381-004 that the petitioner’s request for 3 variances from Zoning Ordinance #78 – Zoned R-2, Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2) including a 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd., a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east and a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west be denied because the petitioner did not demonstrate that the following standards for variance have been met in this case:

1. The petitioner did not demonstrate that there is a practical difficulty existing that is different from those in the zoning and area in which they reside.

2. The petitioner did not demonstrate exceptional or extraordinary circumstances or conditions that apply to the property involved.

3. The variances are not necessary for the preservation and enjoyment of a substantial property right possessed by others in the same zoning or vicinity.

Roll call vote was as follows: Dunaskiss, yes; Cook, yes; Flood, yes; Walker, yes; Durham, yes. Motion passes 5-0.
6. **PUBLIC COMMENTS**

Mr. Michael Humbert commented that if he put a pool in his backyard, he would have to put up a 6-foot fence. This is a money issue.

7. **COMMUNICATIONS**

Trustee Flood commented on the activity of the Fencing Ad-Hoc Committee.

8. **COMMITTEE REPORTS**

9. **MEMBER COMMENTS**

Board member Walker urged residents to fill out the form to get this issue on the Township Board agenda.

Trustee Flood stated that it was one year ago in July 2021 when they held a joint meeting to address this problem. They wanted a six-month moratorium on new fences to get this resolved and they were denied.

Board member Dunaskiss commented that these requests are coming in more frequently, but they are bound by the rules too. This is a bigger problem, and she hopes that they address it.

Vice-chairman Cook commented that they do not change the rules. They have a set of parameters and they are consistent. They also go out and look at the properties. There are things going on the end of the Township and they need to do something to force their hand.

Chairman Durham thanked the Board for their support. The Board uses good judgement. Residents need to understand that the Board is bound by rules, things they must do and things that they look at in a certain way. He explained the Board’s role in the Township. The situation is only going to be changed by some different rules. As a group, they can speak louder than as an individual. The Board does the best job they can.

Board member Dunaskiss concurred with Chairman Durham. This area of Waldon Road has a great need. They should come together as a group and work together with other agencies to bring about positive change.

10. **ADJOURNMENT**

**Moved by Trustee Flood, seconded by Chairman Durham, to adjourn the meeting at 9:17 pm.**

**Motion Carried (5-0)**

Respectfully submitted,

Erin A. Mattice  
Recording Secretary
MOTION OPTIONS

TO: Charter Township of Orion Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Specialist

DATE: July 28, 2022


I am providing motion options for the above-mentioned case.

Please consider and deliberate on each of the criteria listed which the applicant should meet in order for their request to be approved. These are known as the Findings of Fact and need to be included in a motion for either approval or denial. Any additional Findings of Facts should be added to the motion. Also, if more information is needed, a motion to postpone would be in order.

The variance language listed was advertised to the public. As a reminder - due to the language being advertised, the ZBA may lessen the requested deviation(s) but cannot grant more than what was advertised.

** If motion is to approve, conditions can be added to the motion if appropriate. If the variances are modified, use the modified numbers in the motion. **

If you have any questions regarding the case, please give me a call at the Township ext. 5001.
SAMPLE MOTION FOR

APPROVAL OF A NON-USE VARIANCE

In the matter of ZBA case # AB-2022-30, Adam Martin, 2923 Saturn Dr., 09-20-453-024, I move that the petitioner’s request for:

3 variances from Zoning Ordinance 78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.

2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.

3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

be granted because the petitioner did demonstrate that the following standards for variances have been met in this case in that they set forth facts which show that in this case:

Please be specific how the petitioner meets these criteria

1. The petitioner does show the following Practical Difficulty (Defined: Due to unique characteristics of the property and not related to general conditions in the area of the property):

2. The following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone:

3. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts:
4. The granting of the variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following findings:

Further, based on the following findings of facts, the granting of this variance would not:

1. Impair an adequate supply of light and air to adjacent property due to:

2. Unreasonably increase the congestion in public streets due to:

3. Increase the danger of fire or endanger the public safety due to:

4. Unreasonably diminish or impair established property values within the surrounding area due to:

5. Or, In any other respect, impar the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to:
SAMPLE MOTION FOR

DENIAL OF A NON-USE VARIANCE

In the matter of ZBA case # AB-2022-30, Adam Martin, 2923 Saturn Dr., 09-20-453-024, I move that the petitioner’s request for:

3 variances from Zoning Ordinance 78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Please be specific how the petitioner does not meet these criteria be denied because the petitioner did not demonstrate that the following standards for variances have been met in this case:

1. The petitioner did not demonstrate Practical Difficulty because:

2. The petitioner did not establish unique or exceptional circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zoning because:

3. The variance is not necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts:

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4. The granting of the variance or modification will be materially detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following findings:

____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

Further, based on the following findings of facts, the granting of this variance would:

1. Impair an adequate supply of light and air to adjacent property due to:
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

2. Unreasonably increase the congestion in public streets due to:
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

3. Increase the danger of fire or endanger the public safety due to:
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

4. Unreasonably diminish or impair established property values within the surrounding area due to:
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

5. Or, In any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to:
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
Chartra Township of Orion Zoning Board of Appeals
Application for Appeal - Single Family Residential

NOTICE TO APPLICANT:
The following application must be completed and filed with the Township at least thirty days prior to a scheduled ZBA meeting in order to initiate an appeal. There is a non-refundable fee of $250.00 for a residential application.

Regular meetings of the ZBA are held on the second and fourth Mondays of each month at 7:00 p.m. at the Orion Township Hall, 2323 Joslyn Road, Lake Orion, Michigan 48360. A minimum of three cases are required in order to hold a meeting with a maximum of five. The applicant or a representative with written permission from the property owner must be present at the meeting.

PROOF OF OWNERSHIP MUST BE INCLUDED WITH THIS APPLICATION. Acceptable forms of documentation include: Warranty Deed, Quit Claim Deed, Land Contract, or Option to Purchase with a Copy of the Warranty Deed.

APPLICANT
Name: Adam Martin
Address: 2936 Saturn Dr
City/State/Zip: Lake Orion, MI 48360
Phone: (248) 499-9376  Cell: (248) 875-6007  Fax: 
Email: adam.martin@premierav.net

PROPERTY OWNER(S)
Name(s): Adam & Lori Martin
Address: 2936 Saturn Dr
City/State/Zip: Lake Orion, MI 48360
Phone: (248) 499-9376  Cell: (248) 875-6007  Fax: 
Email: adam.martin@premierav.net

CONTACT PERSON FOR THIS REQUEST
Name: Adam Martin  Phone: (248) 875-6007  Email: adam.martin@premierav.net

SUBJECT PROPERTY
Address: 2936 Satrun Dr. Lake Orion, MI 48360  Sidwell Number: 09-20-453-024
Total Acreage: 0.32  Length of Ownership by Current Property Owner: 14 Years, 1 Months

Does the owner have control over any properties adjoining this site? No
Zoning Ordinance Allowance/Requirement: 4' Fence
Deviation requested: 6' Fence
Case #: ______________________

RESIDENTIAL VARIANCE

1. Describe in detail the nature of the request.

I would like to install a 6-foot shadow box fence along the back of the property line only (NOT along the side). 4-foot fences are already allowed.

2. Describe how the request results from special or unique circumstances particular to the property, which are not applicable to other properties in the surrounding area.

Our security, visual, & access privacy as well as the noise level from the increased pedestrian & vehicle traffic resulting from township growth & the new roundabouts has severely diminished our safety and the quality of life in our backyard. Kids trespass through our yard.

3. If the appeal is granted, please explain how the variance will/will not be materially detrimental to the public health, safety and welfare, or to other properties or improvements in the Township:

As mentioned above, it will improve our “health, safety, and well being” and in no way will an additional 2’ be detrimental to the surrounding properties or improvements in the neighborhood or township. The exact same fence will be installed by the same fence company as what was installed on Baldwin Rd.

4. Explain how the request is/is not consistent with other properties in the immediate area, please site examples if possible:

This request is a result of the ongoing changes we are seeing along Waldon Road in a relatively short period of time. Our fence will be consistent with those already installed on Baldwin Road in Keatington.

5. Describe how the alleged practical difficulty has not been self-created.

The “difficulty” is in no way the cause of something we did. It is a result of the growth on Waldon Rd. and new development in the surrounding areas, as well as the ever increasing use of the path.

6. The topography of said land makes the setbacks impossible to meet because:

N/A

7. Describe how strict compliance with the ordinance unreasonably prevents the owner from using the property for a permitted purpose, or to be unnecessarily burdensome.

Our “Quality Of Life” and safety is compromised by the constant noise, visual disturbance and security concerns. We cannot comfortably enjoy our backyard. There is no barrier that prevents anyone from trespassing from the safety path and entering our backyard. This would help minimize the amount of traffic noise we hear while trying to enjoy our backyard. A 6’ fence is a better deterrent for climbing & theft.
8. Have there been any previous appeals involving this property? If so, when? No

9. Is this request the result of a Notice of Ordinance Violation? □ Yes ☒ No

I/We, the undersigned, do hereby request action by the ZBA on the variance or specified matter above, in accordance with Sections 30.06, 30.07, 30.08, 30.10, and 30.11 of the Zoning Ordinance. In support of this request the above facts are provided. I hereby certify that the information provided is accurate and the application that has been provided is complete. As the property owner (or having been granted permission to represent the owner as to this application), I hereby grant the Zoning Board of Appeals members permission to visit the property, without prior notification, as deemed necessary.

Signature of Applicant: [Signature]
Print Name: Adam W. Martin
Date: 06-21-2022

Signature of Property Owner: [Signature]
Print Name: Adam W. Martin
Date: 06-21-2022

If applicable:
I, the property owner, hereby give permission to __________________________ to represent me at the meeting.

OFFICE USE ONLY

Zoning Classification of property: __________________________ Adjacent Zoning: N. S. E. W.

Total Square Footage of Principal Structure: __________________________ Total Square Footage of Accessory Structure(s): __________________________

Description of variance(s):

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Date Filed: __________________________ Fee Paid: __________________________ Receipt Number: __________________________
KEATINGTON HOME OWNERS' ASSOCIATION

P.O. BOX 143 - LAKE ORION, MICH. 48361

Date: 06-01-2022

KHA-Architectural Control Committee

Proposal submitted by:
Name: Adam W. Martin
Address: 2936 Saturn Dr. Lake Orion MI 48360
Phone: (248) 875 - 6007

Proposal:
Install shadow box fencing on the lot line along Waldon Rd. ONLY, at the back of my property (not between houses). We will use the same fence already approved and installed along Baldwin Road.

Action of Committee:
- Accept Proposal as Submitted
- Accept Proposal with Exceptions as Noted
- Proposal Incomplete - Requires Additional Information - See Below
- Reject Proposal - Against Township Zoning Regulations - See Below
- Reject Proposal - Against Subdivision Deed Restrictions - See Below
- Other- See Below

Explanation of Action:
The height is restricted to 48" per the Township Ordinance. The KHA has approved a 6' shadow box fence if the Township also agrees and approves the variance.

Action of committee does not imply compliance with Municipal and Building Regulations. Said regulations should be checked prior to construction.

For a Better Community
KHA-Architectural Control Committee

By:
KHA ACC Chairperson
Article XXVII

General Provisions

27.05 Landscaping, Fences and Walls

1. Location and Purpose. Entranceway structures shall be permitted in any required yard area for the purpose of indicating the entrance to a subdivision, multiple-family development, mobile home park, industrial park, office park, or similar planned development containing several buildings that are related in purpose.

Entranceway structures shall be subject to the provisions concerning corner clearance, set forth in Section 27.03.

2. Construction and Design. Any entranceway structure shall be constructed of permanent, durable materials and shall be designed so as to be compatible with the architecture of surrounding development.

3. Site Plan. Prior to issuance of a building permit for any entranceway structure, a site plan shall be submitted to the Planning Commission for review and approval. The site plan shall include an elevation drawing and a cross-section of the proposed structure. The site plan shall show the relationship of the entranceway to the right-of-way of the intersecting roads and/or driveways.

H. Residential Fence and Wall Regulations.

Where permitted or required in this Ordinance, fences and walls in residential districts shall be subject to the provisions set forth in this section:

1. Lot Enclosures. Fences and walls used to enclose a lot shall be no higher than four (4) feet in height and shall be located on the lot line.

2. Privacy or Decorative Fences and Walls. Fences and walls erected primarily for privacy or decoration shall not be located within any required yard setback area and shall not exceed six (6) feet in height.

3. Corner Clearance. No fences or walls shall be erected, established or maintained on any corner lot so as to obscure the view of drivers in vehicles approaching the intersection. All specifications concerning corner clearance as set forth in Section 27.03 shall be complied with.

4. Large Lots Excluded. Fences and walls shall be excluded from the provisions of this section if such lots have an area of more than two (2) acres, have frontage of at least two hundred (200) feet, and are not part of a recorded plat.

5. Fences Enclosing Public Areas. Fences, walls or other protective barriers that enclose parks, playgrounds, or other public landscaped areas shall not exceed ten (10) feet in height. The Planning Commission may authorize a fence, wall, or protective barrier of additional height, with or without barbed wire, where necessary, to protect public utility or municipal installations in a residential district.

6. Wall Specifications. Walls shall be erected on a concrete foundation which shall have a minimum depth of forty-two (42) inches below grade. The foundation shall be at least four (4) inches wider than the wall to be erected.

7. Fence Specifications. Fences constructed of chain link, wood, vinyl or other similar materials are permitted. Posts shall be sunk into the ground at least three (3) feet.

8. Barbed Wire Prohibited. Barbed wire, spikes, nails, or any other sharp-pointed intrusions shall be prohibited on top or on the sides of any fence, wall, or protective barrier, except that barbed wire cradles consisting of no more than three (3) strands of wire may be placed on top of fences enclosing public utility buildings.

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construction on the rebuilding project is begun and diligently carried on within a reasonable time after the excavation, demolition, or removal of the theretofor existing building.

K. Administrative Nonconformities.

A structure or use which is administratively nonconforming shall remain nonconforming until special approval has been granted pursuant to application submitted to the proper authority. Where special approval has been granted, such a structure or use shall be deemed conforming. However, where special approval has been denied, such structure or use shall be considered nonconforming on the basis for which the application for special approval was denied.

L. Change in Tenancy or Ownership.

In the event there is a change in tenancy, ownership or management of an existing nonconforming use or structure, such nonconforming use or structure shall be allowed to continue pursuant to the terms of this Ordinance regarding such nonconformities.

M. Special Exceptions.

Any use for which a special exception is permitted, as provided in this Ordinance, shall not be deemed a nonconformity.

Section 27.02 – Buildings, Structures, and Uses

A. Accessory Buildings, Structures and Uses. (amended 02.17.04)

1. An accessory building, structure or use shall not be located on a parcel unless there is a principal building, structure, or use already located on the same parcel of land.

2. An accessory building or structure shall not be constructed prior to the commencement of construction of the principal building or structure or the establishment of the principal use.

3. A building, structure or use which is accessory to a single-family dwelling and attached to it shall, for the purposes of location and setbacks, be considered part of the principal building.

4. A building, structure or use which is accessory to a single-family dwelling and detached from it shall meet the same front and side yard setback requirements as the principal structure, as set forth in the applicable zoning district of this Ordinance. However, the minimum rear yard setback shall be ten (10) feet for all detached accessory buildings. All accessory buildings and structures shall be included in the computation of total maximum area of all accessory buildings, and together with the principal building or structure shall not exceed the percentage of lot coverage requirements. (amended 07.16.18)

5. Detached accessory buildings or structures in non-residential districts shall conform to the height requirements for the principal building or structure, as set forth in the applicable zoning district, except as specifically permitted otherwise in this Ordinance. However, detached accessory buildings or structures in non-residential districts that exceed the height of the principal building or structure, as constructed, shall not be located in the front yard. (amended 07.16.18)

Detached accessory buildings or structures in residential districts shall not exceed the height of the principal building or structure as constructed. However, the height of a detached accessory building or structure may exceed the height of the principal building or structure, if said accessory building or structure is located at least one hundred fifty (150) feet distant and to the rear of the principal building or structure. In no case shall the height of a detached accessory building or structure exceed the maximum height requirement for the principal building or structure, as set forth in the applicable zoning district, except as specifically permitted otherwise in this Ordinance. (amended 07.16.18)
The fire department has reviewed the 5 attached cases and has no concerns at this time.

Jeffrey Williams, CFPS – Fire Marshal
Orion Township Fire Department - Fire Prevention
3365 Gregory Road Lake Orion, MI 48359
Fax: 248.309.6993

From: Debra Walton <dwalton@oriontownship.org>
Sent: Monday, July 18, 2022 1:47 PM
To: Jeff Williams <jwilliams@oriontownship.org>
Subject: Residential ZBA Document for the August 8, 2022, ZBA Meeting

Attached are five ZBA residential cases that needs to be reviewed by you for the August 8, 2022, ZBA meeting.
MEMORANDUM

TO: Zoning Board of Appeals
FROM: Lynn Harrison, Planning & Zoning Coordinator
DATE: October 4, 2022
SUBJECT: Staff Report for AB-2022-30, 31, and 32

ZBA Case AB-2022-30, Adam Martin, 2936 Saturn Dr.; Case AB-2022-31, Ken Backus; 2911 Walmsley Circle; and Case AB-2022-32, Mike Humbert, 2917 Walmsley Circle were postponed from the August 8, 2022 ZBA Meeting (Minutes Attached).

To date, the applicants have not provided any additional information.

Please contact me if you have any questions.
CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS
***** MINUTES *****
REGULAR MEETING – MONDAY, August 8, 2022 – 7:00 PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, August 8, 2022, at 7:00 pm at the Orion Township Municipality Complex Board Room, 2323 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:
Dan Durham, Chairman
Tony Cook, Vice-Chairman
Mike Flood, BOT Rep to ZBA
Don Walker, PC Rep to ZBA
Diane Dunaskiss, Board member

ZBA MEMBERS ABSENT:
None

CONSULTANT PRESENT:
David Goodloe, Building Official

OTHERS PRESENT:
Ted Adams
Christi Adams
Adam Martin
Lori Martin
Kenneth Backus
Mike Humbert
Catherine Bako
Kris Baker

1. OPEN MEETING
Chairman Durham called the meeting to order at 7:00 pm.

2. ROLL CALL

3. MINUTES

A. 07-25-22, ZBA Regular Meeting Minutes

Board member Dunaskiss moved, seconded by Chairman Durham, to approve the 07-25-2022 minutes as presented.

Roll Call Vote was as follows: Dunaskiss, yes; Cook, yes; Walker, yes; Flood, yes; Durham; yes. Motion passes 5-0.

4. AGENDA REVIEW AND APPROVAL.

Trustee Flood moved, seconded by Chairman Durham, to approve the agenda as presented.

Vote was as follows: Flood, yes; Walker, yes; Cook, yes; Dunaskiss, yes; Durham, yes. Motion passes 5-0.

5. ZBA BUSINESS

A. AB-2022-29, Theodore & Christi Adams, 2922 Saturn Dr., 09-20-453-023

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 4 variances from Zoning Ordinance #78 – Zoned R-2
Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Article XXVII, Section 27.17(B)
4. A 25-ft. wetland setback variance from the required 25-ft. to erect a 6-ft. privacy fence (structure) 0-ft. from a wetland.

Mr. Ted Adams and Christi Adams introduced themselves.

Chairman Durham stated that the Fire Department has no concerns with any of the cases on the agenda for tonight’s meeting. The Board received two letters. The first was from Mark Tarquini, 2823 Waring Place, Director of Keatington Homeowner’s Association, in support for the 6-foot height variance and the setback variances requested for the properties along Waldon Road and Chairman Durham listed all property addresses that the letter supports. The second letter was received from a neighbor expressing concerns and comments regarding the request for height and setback variances for fences along Waldon Road.

Mr. Adams summarized the variance request. They would like the 6-foot fence because of privacy and safety concerns.

Ms. Adams stated that when they purchased the home, they were told that a 6-foot fence was being paid for and put up by the Homeowner’s Association but after they moved in, they found out that this was false information. She explained what they have done up to this point to alleviate their concerns. They tried putting up a wood wall, but this was not effective. They also planted vegetation and the trees did not thrive and were not effective. When they heard about the fences that were placed on Baldwin Road, they thought this was their opportunity.

Chairman Durham asked if the traffic on Waldon Road has increased since they purchased the home.

Mr. Adams and Ms. Adams replied that it has definitely gotten busier, both traffic and pedestrian.

Ms. Adams expressed concerns over motorists stopping and trespassing on her property. People that walk along the path can see right into their home and a 4-foot fence could simply be looked over and would not provide privacy.

Chairman Durham asked how 2 more feet would help.

Ms. Adams replied that it would deter someone from hopping over the fence. If someone wanted to remove something from their property, it would be harder to take it over a 6-foot fence. When they have a 6-foot fence, it is more difficult to see a passing walker on the path.

Chairman Durham stated that he is concerned about a fence going into a wetland setback.

Mr. and Mrs. Adams explained that they have had individuals park and go onto their property to fish.
Trustee Flood asked if she had called the police.

Ms. Adams explained that she was afraid of repercussions.

Trustee Flood explained that the petitioner was actually asking for a site plan change because they are asking to replace a split rail fence that was part of the original site plan approval. He stated that they have a problem with 6 feet fences in the township. He thinks this is a Homeowner’s Association problem.

Ms. Adams stated that there is a lot more truck traffic on the road now.

Trustee Flood commented on traffic problems on Baldwin Road. He reiterated that this is a Homeowner’s Association problem because they are changing the site plan for the development. He thinks this should be worked out through planning and zoning.

Ms. Adams commented that they had listened to other meetings as to the fact that each was a case-by-case basis and she understood that this was the meeting that they should attend. She stated that for them to pay the money and then you say that they should go to the Homeowners Association, this does not seem fair.

Trustee Flood stated that he will base his decision on the practical difficulty. He believes that a 4-foot fence will suffice, and he explained.

Ms. Adams stated that the view is fine now, it is worse during the winter months.

Trustee Flood asked if the petitioner had informed the Homeowner’s Association about what is going on.

Ms. Adams stated that if someone comes down Waldon and enters the ice, they are supposed to call the Homeowner’s Association.

Trustee Flood commented on beach access in the area. He is not in favor of any 6-foot fence in the Township.

Chairman Durham asked for public comment.

Mark Rossi stated that he was the first one that was approved for a fence on Waldon Road. This petitioner’s case is amplified because of their proximity to the lagoon. The security issue is huge. He commented in the changes in the Township over the years. This petitioner is worse than his case because they have constant traffic, sound, etc. The quality of life that is affected by the changes in the Township affect them more drastically. The four-foot fence will not suffice, and a 6-foot fence is more secure and he commented on the visual aspect of having a barrier. His quality of life has increased since he was able to put up the fence.

Ms. Adams stated that they are willing to work with the Township if there is a setback issue. There isn’t anything they can do about the water’s edge.

Mr. Adams commented on the large tree on his property and explained that he would like the fence to go on the side of the tree.

Chairman Durham asked if they have considered greenery.
Ms. Adams commented that they had planted 14 evergreens and 3 lived.

Chairman Durham asked if the trees withholding the sun belong to the petitioner.

Mr. Adams and Ms. Adams stated that they do not know.

Trustee Flood stated that it would depend on the road right of way on Waldon Road.

Board member Walker stated that they can have a 6-foot fence if they move it in.

Ms. Adams stated that they asked for the setbacks so the neighbor’s fences and their fence would touch without a 10-foot gap. They understand that they can put a 6-foot fence 35 foot from Waldon Road, but they did not want to lose 35 feet.

Mr. Adams stated that that would probably be within their beach.

Board member Walker stated that he voted for Mr. Rossi’s fence but that was the last one. The problem is, they need a practical difficulty that goes with the land. He understands the changes that the Township has experienced but they would have to have to find practical difficulty with every case. He thinks this is the wrong solution. The right solution is to change the ordinance. He also is concerned with the wetland issue. They are asking for a variance against the wetland’s ordinance.

Ms. Adams stated that there is a split rail fence, and they want to put the 6-foot fence in the same location.

Chairman Durham asked Building Official Goodloe about the need to find practical difficulty with each case.

Building Official Goodloe stated that they are looking for unique circumstances that apply to the property.

Ms. Adams explained her concerns about someone drowning on her property and not being able to do anything about it.

Chairman Durham stated that how does the petitioner know where the people coming into their property are coming from.

Ms. Adams replied that they visually see the majority of them coming from Waldon Road.

Board member Dunaskiss asked if a berm could be built on the property line.

Building Official Goodloe replied yes, as long as it does not affect property drainage to adjacent properties.

Board member Dunaskiss asked if they could build a berm and put the 4-foot fence on top of the berm.

Building Official Goodloe answered yes.
Board member Dunaskiss stated that she shares the concern about the 6-foot fences. It is not the kind of look that is attractive in a community. She shares some of the same concerns with Trustee Flood. There are many trees on the property that are mature and not necessarily healthy and a lot of overgrowth preventing new greenery from being healthy. There is no point to keeping split rail fence. She suggested putting up a berm and putting a 4-foot fence on top and they could make it attractive. It would be safe and would help with visibility. She feels that this is a concern for the Homeowner's Association, and they should share the burden. She asked if they could look at other alternatives and work with the Association to come up with a plan.

Ms. Adams stated that she can investigate this. Her practical difficulty is worse than Mr. Rossi. The Board is telling them one standard and then they are changing the meaning of practical difficulty.

Chairman Durham stated that they are looked at on a case-by-case basis. The former cases are approved. Each case should be looked at separately. He commented on the availability of coming on the property prior to tonight's meeting and how that might not be possible with a stockade fence.

Board member Dunaskiss asked if a 4-foot fence would keep the people out of the wetland area.

Ms. Adams replied no.

Mr. Adams commented on what it would look like if he put up a berm and a 4-foot fence and the neighbors put up something different. In his opinion, this would not be appealing at all.

Building Official Goodloe stated that when you are dealing with dimensional variances, he read from a document from MSU. He stated that this document says, “if the circumstances upon which a variance is warranted is shared among numerous properties in the same zone, the variance request should be denied.” It is because it is not particular to that property. If they held the problem of noise to a standard, then everyone could qualify for a variance. This is a bigger issue for the subdivision. When the ZBA grants a variance, it stays with the property. Dogs and disputing neighbors are not a practical difficulty. If it what is being asked for is shared among all the neighbors along Waldon Road, it is not particular to one specific property.

Vice-chairman Cook stated that he is not a fan of 6-foot fences at all. He is trying to come up with a practical difficulty. After he heard what Building Official Goodloe read, it is a commonality among neighbors. When you add the wetland issue, there is a reason why we have a wetland ordinance. He is trying to find a reason why this is unique and is not able to.

Mr. Adams stated that they are the only one along Waldon Road that someone can walk on the property and drown.

Chairman Durham stated that this is a blanket request from several residents. Mr. Adams brought up the issue of being on the water. He suggested that anyone looking to get an ordinance change can make a presentation to the Township Board.

Trustee Flood stated that right now they have a committee that is supposed to be addressing this problem.

Building Official Goodloe stated that anyone can apply at the Clerk's Office to amend an ordinance. There is an application for that.
Ms. Adams asked who decides how that happens.

Trustee Flood replied the Township Board.

Chairman Durham explained the options to the petitioners.

Mr. Adams stated that he is okay coming back 5 feet, but he cannot do that at the water’s edge.

Chairman Durham stated that this would require them to ask to be postponed and come back to the Board with different measurements and drawing and try again.

Building Official Goodloe stated that they could request a lesser variance.

Chairman Durham commented that they would not be able to provide hard numbers at tonight’s meeting in moving the fence 5 feet.

Board member Walker stated that if the petitioner agrees to move their fence in and the neighbors did not agree to move their fence in, the fences will not line up. They have to think about what it would look like overall.

Building Official Goodloe stated that this is exactly why this is not unique to this property, it also involves the neighbors.

Trustee Flood stated that tomorrow, the petitioners could put a 4-foot line all the way down their property line along Waldon Road and it would be perfectly legal. It is the homeowner’s choice.

Building Official Goodloe stated that he would have to review the wetland area because this is different.

Trustee Flood stated that the Township already has one there. If someone climbs over the fence, that is their fault.

Board member Walker commented that he did not know a resident could fill out a form to change the ordinance, he has never heard of that.

Trustee Flood stated that for anything to be put on a Township Board Agenda, it must be approved.

Board member Walker asked if this item has come before the Board before.

Building Official Goodloe commented on another ordinance amendment that went before the Board.

Trustee Flood stated that they are working to get the Committee back together to get this resolved. The way the ordinance is set up now, if they have two front yards, it is 35 feet setback for this case. The Homeowner’s Association needs to address this. If they get denied, they have recourse to go to Oakland County Circuit Court.

Chairman Durham asked for additional public comment.
Mr. Ken Backus commented on his history of living in the Township. He lives across the canal from the petitioner. He is in favor of the things that the petitioner has presented. He commented on the big trucks that unload at Kroger and that could be a reason for a 6-foot fence. If he had a taller fence, which would reduce the sound being heard. He suggested that if they survey random residents in a mile radius and ask them about the attractiveness of the fences on Baldwin as compared to the fences along Waldon Road. He believes the fences on Baldwin Road are much more attractive.

Mr. Adam Martin, neighbor, pointed out that the petitioner has an attractive nuisance. People that drive down the road and they see access to the water. The unique detriment that the petitioner has is that it is so easy and inviting for individuals to feel that they have access to that space. It is not known that this is personal property, so people assume that it is public property. Out of all the fence cases, theirs is the most unique.

Ms. Adams stated that they cannot put a berm along the wetlands because it would be an EGLE issue.

Chairman Durham asked for final comments.

Mr. Adams asked for a vote on what was presented.

Ms. Adams stated that their unique hardship is people are able to come onto their property and access the water.

Board member Walker moved, and Vice-chairman Cook supported, in the matter of ZBA Case AB-2022-29, Theodore & Christi Adams, 2922 Saturn Dr., 09-20-453-023 that the petitioner’s request for variances from Article XXVI, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2) including a 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.; a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east; a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west; and a variance from Article XXVII, Section 27.17(B) for a 25-ft. wetland setback variance from the required 25-ft. to erect a 6-ft. privacy fence (structure) 0-ft. from a wetland be denied because the petitioner did not demonstrate that the following standards for variances have been met:

The petitioner did not demonstrate practical difficulty in that from the discussions we had with the petitioner, these concerns that the petitioner has does not run, with the possible exception of the water issue. The issues of noise, too many people and trespassing are issues that are known everywhere and all of these things apply to all residents of the Township. It is not practical difficulty due to ownership of that particular property.

Roll call vote was as follows: Dunaskiss, yes; Cook, yes; Walker, yes; Flood, yes; Durham, yes. Motion passes 5-0.

B. AB-2022-30, Adam Martin, 2936 Saturn Dr., 09-20-453-024

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2
Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05 (H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Mr. Martin introduced himself and summarized the variance request. He would like to postpone his case so he could come up with a practical difficulty.

Trustee Flood moved, and Chairman Durham supported, at the applicant’s request to postpone ZBA Case AB-2022-30, Adam Martin, 2936 Saturn Drive, 09-20-453-024, to October 10, 2022.

Roll call vote was as follows: Walker, yes; Dunaskiss, yes; Flood, yes; Cook, yes; Durham, yes. Motion passes 5-0.

Mr. Pat Kaputo stated that he has vegetation along his property and commented that this vegetation is very difficult to maintain. The practical difficulty argument makes no sense, and it makes perfect sense for these residents. It is only a very small percentage of residents of Orion Township who live along Waldon Road. He commented on the increased traffic in the area, the shopping center that was not there when they moved in, the roundabout, and the church. He commented on the weeds along the safety path. He commented on other neighbors that have come before the Board for a fence. The Board doesn't understand how this affects these neighbors’ everyday lives. The Township needs to take care of things in a timely manner.

Chairman Durham stated that practical difficulty is part of the Enabling Legislation.

Mr. Kaputo answered that he is aware, but he questioned the definition of it that the Board is using. He commented on the garbage behind Kroger. He urged the Board to listen to the petitioners.

C. AB-2022-31, Ken Backus, 2911 Walmsley Circle Dr., 09-20-452-013

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. rear yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Mr. Ken Backus introduced himself.

Chairman Durham explained the options for the petitioner.

Trustee Flood asked if the Homeowner’s Association will address this. The fences are the Association’s boundary lines and are the Homeowners Association’s problem.
Board member Dunaskiss moved, and Trustee Flood supported, in the matter of ZBA Case AB-2022-31, Ken Backus, 2911 Walmsley Circle Dr., 09-20-452-013 that this request, at the petitioner’s request, be postponed until October 10, 2022.

Roll call vote was as follows: Flood, yes; Walker, yes; Cook, yes; Dunaskiss, yes; Durham, yes. Motion passes 5-0.

D. AB-2022-32, Mike Humbert, 2917 Walmsley Circle Dr., 09-20-452-012

Chairman Durham read the petitioner’s request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Mr. Mike Humbert introduced himself to the Board and asked for postponement of his case.

Trustee Flood moved, and Board member Dunaskiss supported, in the matter of ZBA Case AB 2022-32, B-2022-32, Mike Humbert, 2917 Walmsley Circle Dr., 09-20-452-012 at the applicant’s request to postpone this case until October 10, 2022.

Roll call vote was as follows: Cook, yes; Dunaskiss, yes; Walker, yes; Flood, yes; Durham, yes. Motion passes 5-0.

Chairman Durham urged petitioners that were postponed at tonight’s meeting, come back to the next meeting with some new information. They can contact the Township, Building Department and he asked them to use the time they were given to research new information.

Building Official Goodloe stated that he would gladly meet with any of the petitioners to look for their practical difficulty.

E. AB-2022-33, Catherine Baker, 2933 Walmsley Circle Dr., 09-20-381-004

Chairman Durham read the petitioner’s request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.
Ms. Catherine Baker introduced herself and her son to the Board. She provided pictures to the Board. She stated that a lot of her concerns involve privacy so anyone can see into their yard. A 4-foot fence doesn't work. She likes the idea of vegetation, but it is a lot to keep up and things die off. She described the existing vegetation in her yard and the road right of way. She described safety concerns and privacy concerns that she has for her property. She doesn’t understand why the fence is such an issue.

Chairman Durham stated that the 6-foot fence is prohibited by ordinance.

Trustee Flood stated that they can put up a 6-foot fence, 35 feet off the lot line.

Ms. Baker replied that they wouldn’t have any back yard left.

Mr. Baker stated that this is why they are asking for the variance.

Trustee Flood stated that this is why the ordinance needs to be addressed.

Mr. Baker stated that the Board has the power to approve the variance so therefore, they are trying to push it on someone else.

Chairman Durham asked for public comment.

Mr. Rossi stated that the rules have changed since he was approved. They have people that have received approval along Baldwin Road and now everything has changed on how the Board is looking at it. He suggested that the Board work on what they want from the Homeowner’s Association so that they can present it to the President and try to get it done. The Association is not concerned with the perimeter of the property that involves a small percentage of people in the development.

Trustee Flood asked if they should contact Building Official Goodloe.

Building Official Goodloe stated that they should talk to Tammy Girling, Planning and Zoning Director, to find out if it was a PUD or a site plan for this development. They need to find out if the development would consider putting a fence around the perimeter.

Trustee Flood commented that hopefully they can work this out without getting lawyers involved.

Ms. Adams stated that she watched the videos of the people who got approved for the fences. Vice-chairman Cook suggested that they get a group together for conformity. She surveyed the group and got the neighbors together and now she feels responsible for all the monies spent. She felt that they were doing what they were supposed to do and now they are telling them to do something different. Something should have been said before all the time and money was wasted.

Ms. Baker explained how she decided to go to the Board for a variance. She reiterated her concerns about safety and privacy.

Building Official Goodloe stated that having two front yards can be considered a practical difficulty. He stated that 10 foot is the minimum setback off a regular rear yard. He suggested she think about this and the topography of the yard when appealing to this Board. He suggested that they look for a compromise.

Ms. Baker explained her property difficulties.

Building Official Goodloe suggested that the petitioner put this all together and come back. None of the practical difficulties were on the application. He suggested that the petitioner look at the uniqueness of their properties.
Building Official Goodloe suggested that the applicants read the minutes from the meetings where the fences were approved. This Board can only look at what they are presented in the application and what they are presenting here. The Board can only vote on what goes with the land.

Chairman Durham explained the options to the applicant.

Ms. Baker explained all the effort that she has put in so far. She does not want to postpone.

Vice-chairman Cook asked what she has done in terms of planting vegetation.

Ms. Baker stated that she planted 10 of the emeralds and all of them died. She explained the problems with the vegetation in her yard.

Mr. Baker explained that the Black Walnut trees on the other side release a toxin inhibiting other plants to grow so it is impossible to get things to grow on that side.

Trustee Flood asked who owns the road right of way.

Building Official Goodloe replied that he doesn’t know.

Trustee Flood stated that he would like clarification. He believes that it is an Oakland County right of way.

Ms. Baker expressed her concern about the vegetation in the road right of way. She reiterated her privacy and safety concerns. She does not think a 4-foot fence is sufficient.

Chairman Durham asked for public comment.

Mr. Kaputo commented on the vegetation in the area and the pathways in the area. He commented on the neighborhood plan and the visibility of the subject parcel.

Ms. Baker reiterated her safety concerns.

Mr. Baker reiterated why a 4-foot fence would not help with their privacy concerns.

Board member Dunaskiss moved, and Vice-chairman Cook supported, in the matter of ZBA Case AB-2022-33, Catherine Baker, 2933 Walmsley Circle Dr., 09-20-381-004 that the petitioner’s request for 3 variances from Zoning Ordinance #78 – Zoned R-2, Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2) including a 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd., a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east and a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west be denied because the petitioner did not demonstrate that the following standards for variance have been met in this case:

1. The petitioner did not demonstrate that there is a practical difficulty existing that is different from those in the zoning and area in which they reside.

2. The petitioner did not demonstrate exceptional or extraordinary circumstances or conditions that apply to the property involved.

3. The variances are not necessary for the preservation and enjoyment of a substantial property right possessed by others in the same zoning or vicinity.

Roll call vote was as follows: Dunaskiss, yes; Cook, yes; Flood, yes; Walker, yes; Durham, yes. Motion passes 5-0.
6. PUBLIC COMMENTS

Mr. Michael Humbert commented that if he put a pool in his backyard, he would have to put up a 6-foot fence. This is a money issue.

7. COMMUNICATIONS

Trustee Flood commented on the activity of the Fencing Ad-Hoc Committee.

8. COMMITTEE REPORTS

9. MEMBER COMMENTS

Board member Walker urged residents to fill out the form to get this issue on the Township Board agenda.

Trustee Flood stated that it was one year ago in July 2021 when they held a joint meeting to address this problem. They wanted a six-month moratorium on new fences to get this resolved and they were denied.

Board member Dunaskiss commented that these requests are coming in more frequently, but they are bound by the rules too. This is a bigger problem, and she hopes that they address it.

Vice-chairman Cook commented that they do not change the rules. They have a set of parameters and they are consistent. They also go out and look at the properties. There are things going on the end of the Township and they need to do something to force their hand.

Chairman Durham thanked the Board for their support. The Board uses good judgement. Residents need to understand that the Board is bound by rules, things they must do and things that they look at in a certain way. He explained the Board's role in the Township. The situation is only going to be changed by some different rules. As a group, they can speak louder than as an individual. The Board does the best job they can.

Board member Dunaskiss concurred with Chairman Durham. This area of Waldon Road has a great need. They should come together as a group and work together with other agencies to bring about positive change.

10. ADJOURNMENT

Moved by Trustee Flood, seconded by Chairman Durham, to adjourn the meeting at 9:17 pm.

Motion Carried (5-0)

Respectfully submitted,

Erin A. Mattice
Recording Secretary
MOTION OPTIONS

TO: Charter Township of Orion Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Specialist

DATE: August 1, 2022


I am providing motion options for the above-mentioned case.

Please consider and deliberate on each of the criteria listed which the applicant should meet in order for their request to be approved. These are known as the Findings of Fact and need to be included in a motion for either approval or denial. Any additional Findings of Facts should be added to the motion. Also, if more information is needed, a motion to postpone would be in order.

The variance language listed was advertised to the public. As a reminder - due to the language being advertised, the ZBA may lessen the requested deviation(s) but cannot grant more than what was advertised.

** If motion is to approve, conditions can be added to the motion if appropriate. If the variances are modified, use the modified numbers in the motion. **

If you have any questions regarding the case, please give me a call at the Township ext. 5001.
SAMPLE MOTION FOR

APPROVAL OF A NON-USE VARIANCE

In the matter of ZBA case # AB-2022-31, Ken Backus, 2911 Walmsley Circle Dr., 09-20-452-013, I move that the petitioner’s request for:

3 variances from Zoning Ordinance 78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.

2. A 10-ft. rear yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.

3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

be granted because the petitioner did demonstrate that the following standards for variances have been met in this case in that they set forth facts which show that in this case:

Please be specific how the petitioner meets these criteria

1. The petitioner does show the following Practical Difficulty (Defined: Due to unique characteristics of the property and not related to general conditions in the area of the property):

________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________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4. The granting of the variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following findings:

Further, based on the following findings of facts, the granting of this variance would not:

1. Impair an adequate supply of light and air to adjacent property due to:

2. Unreasonably increase the congestion in public streets due to:

3. Increase the danger of fire or endanger the public safety due to:

4. Unreasonably diminish or impair established property values within the surrounding area due to:

5. Or, In any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to:
In the matter of ZBA case # **AB-2022-31, Ken Backus, 2911 Walmsley Circle Dr., 09-20-452-013**, I move that the petitioner’s request for:

3 variances from Zoning Ordinance 78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.

2. A 10-ft. rear yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.

3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Please be specific how the petitioner does not meet these criteria be **denied** because the petitioner did not demonstrate that the following standards for variances have been met in this case:

1. The petitioner did not demonstrate Practical Difficulty because:

2. The petitioner did not establish unique or exceptional circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zoning because:

3. The variance is *not* necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts:
4. The granting of the variance or modification will be materially detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following findings:

   

   Further, based on the following findings of facts, the granting of this variance would:

1. Impair an adequate supply of light and air to adjacent property due to:

2. Unreasonably increase the congestion in public streets due to:

3. Increase the danger of fire or endanger the public safety due to:

4. Unreasonably diminish or impair established property values within the surrounding area due to:

5. Or, In any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to:
Charter Township of Orion Zoning Board of Appeals  
Application for Appeal - Single Family Residential

NOTICE TO APPLICANT:  
The following application must be completed and filed with the Township at least thirty days prior to a scheduled ZBA meeting in order to initiate an appeal. There is a non-refundable fee of $250.00 for a residential application.

Regular meetings of the ZBA are held on the second and fourth Mondays of each month at 7:00 p.m. at the Orion Township Hall, 2323 Joslyn Road, Lake Orion, Michigan 48360. A minimum of three cases are required in order to hold a meeting with a maximum of five. The applicant or a representative with written permission from the property owner must be present at the meeting.

PROOF OF OWNERSHIP MUST BE INCLUDED WITH THIS APPLICATION. Acceptable forms of documentation include: Warranty Deed, Quit Claim Deed, Land Contract, or Option to Purchase with a Copy of the Warranty Deed.

APPLICANT

<table>
<thead>
<tr>
<th>Name:</th>
<th>Ken Backus</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>2911 Walmsley Circle Dr.</td>
</tr>
<tr>
<td>Phone:</td>
<td>248.464.9912</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:bkenback@aol.com">bkenback@aol.com</a></td>
</tr>
</tbody>
</table>

PROPERTY OWNER(S)

<table>
<thead>
<tr>
<th>Name(s):</th>
<th>Ken Backus</th>
</tr>
</thead>
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</tr>
</tbody>
</table>

CONTACT PERSON FOR THIS REQUEST

| Name: | Ken Backus | Phone: 248.464.9912 | Email: bkenback@aol.com |

SUBJECT PROPERTY

<table>
<thead>
<tr>
<th>Address:</th>
<th>2911 Walmsley Circle Dr., Lake Orion, MI 48360</th>
<th>Sidwell Number:</th>
<th>09-20-452-013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Acreage:</td>
<td>.60 Acres</td>
<td>Length of Ownership by Current Property Owner:</td>
<td>55 Years, 0 Months</td>
</tr>
<tr>
<td>Does the owner have control over any properties adjoining this site?</td>
<td>NO</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Zoning Ordinance Allowance/Requirement</td>
<td>variance for fence to be 0 feet from rear property line</td>
<td>Deviation requested</td>
<td>10 feet</td>
</tr>
</tbody>
</table>
Case #: ____________________

RESIDENTIAL VARIANCE

1. Describe in detail the nature of the request.

I would like to install a 6’ shadow box fence along the back of the property line only (NOT along the sides). 4-foot fences are already approved by the Township & the KHA.

2. Describe how the request results from special or unique circumstances particular to the property, which are not applicable to other properties in the surrounding area.

My security, visual, & privacy as well as the noise level from the increased pedestrian & vehicle traffic resulting from township growth has severely diminished the safety and the quality of life while in the backyard. Kids trespass in my yard. Adults also trespass in order to ice fish from my property.

3. If the appeal is granted, please explain how the variance will/will not be materially detrimental to the public health, safety and welfare, or to other properties or improvements in the Township.

It will improve the “health, safety, and well being” and in no way will an additional 2’ be detrimental to the surrounding properties or improvements in the neighborhood or township. The exact same fence will be installed by the same fence company as Baldwin. This would also protect kids from a potential water hazard.

4. Explain how the request is/is not consistent with other properties in the immediate area, please site examples if possible:

This request is a result of the ongoing changes I have seen along Waldon Road in a relatively short period of time. The fence will be consistent with those already installed on Baldwin Road in Keatington.

5. Describe how the alleged practical difficulty has not been self-created.

The “difficulty” is in no way the cause of something I did. It is a result of the growth on Waldon Rd. and the development in the surrounding areas, as well as the constant increased use of the path. This is based on the increased traffic as the area has matured since I purchased the property.

6. The topography of said land makes the setbacks impossible to meet because: N/A

7. Describe how strict compliance with the ordinance unreasonably prevents the owner from using the property for a permitted purpose, or to be unnecessarily burdensome.

Our “Quality Of Life” and safety is compromised by the constant noise, the visual disturbance and security concerns. We cannot comfortably enjoy our backyard. There is no barrier that prevents anyone from trespassing from the path & entering our yard or water. This would also help to minimize the amount of traffic noise we hear while trying to enjoy our backyard. A 6’ fence is a better deterrent to climbing & theft.
Case #: __________________

8. Have there been any previous appeals involving this property? If so, when? No

9. Is this request the result of a Notice of Ordinance Violation? □ Yes  □ No

I/We, the undersigned, do hereby request action by the ZBA on the variance or specified matter above, in accordance with Sections 30.06, 30.07, 30.08, 30.10, and 30.11 of the Zoning Ordinance. In support of this request the above facts are provided. I hereby certify that the information provided is accurate and the application that has been provided is complete. As the property owner (or having been granted permission to represent the owner as to this application), I hereby grant the Zoning Board of Appeals members permission to visit the property, without prior notification, as is deemed necessary.

Signature of Applicant: ______________________ Date: 06/15/2022
Print Name: Ken Backus

Signature of Property Owner: ______________________ Date: 06/15/2022
Print Name: Ken Backus

If applicable:
I the property owner, hereby give permission to ______________________ to represent me at the meeting.

OFFICE USE ONLY

Zoning Classification of property: ___________ Adjacent Zoning: N. S. E. W.

Total Square Footage of Principal Structure: ___________ Total Square Footage of Accessory Structure(s): ___________

Description of variance(s):

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Date Filed: ______________________ Fee Paid: ______________________ Receipt Number: ______________________

Page 4 of 4
KEATINGTON HOME OWNERS' ASSOCIATION
P.O. BOX 143 - LAKE ORION, MIC. 48361

Date: 06/01/2022

KHA-Architectural Control Committee

Proposal submitted by:
Name  Ken Backus
Address  2911 Walmsley Circle, Lake Orion, MI 48360
Phone  248.464.9912

Proposal:
Install shadow box fencing on the lot line along Waldon Rd. ONLY, at the back of my property (not between houses). We will use the same fence already approved and installed along Baldwin Road.

Action of Committee:

Accept Proposal as Submitted
Accept Proposal with Exceptions as Noted
Proposal Incomplete - Requires Additional Information - See Below
Reject Proposal - Against Township Zoning Regulations - See Below
Reject Proposal - Against Subdivision Deed Restrictions - See Below
Other- See Below

Explanation of Action:
The height is restricted to 48" per the Township Ordinance. The KHA has approved a 6' shadow box fence if the Township also agrees and approves the variance.

Action of committee does not imply compliance with Municipal and Building Regulations. Said regulations should be checked prior to construction.

For a Better Community
KHA-Architectural Control Committee

By:

KHA ACC Chairperson

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construction on the rebuilding project is begun and diligently carried on within a reasonable time after the
evacuation, demolition, or removal of the theretofore existing building.

K. Administrative Nonconformities.

A structure or use which is administratively nonconforming shall remain nonconforming until special approval
has been granted pursuant to application submitted to the proper authority. Where special approval has been
granted, such a structure or use shall be deemed conforming. However, where special approval has been denied,
such structure or use shall be considered nonconforming on the basis for which the application for special approval
was denied.

L. Change in Tenancy or Ownership.

In the event there is a change in tenancy, ownership or management of an existing nonconforming use or structure,
such nonconforming use or structure shall be allowed to continue pursuant to the terms of this Ordinance
regarding such nonconformities.

M. Special Exceptions.

Any use for which a special exception is permitted, as provided in this Ordinance, shall not be deemed a
nonconformity.

Section 27.02 – Buildings, Structures, and Uses

A. Accessory Buildings, Structures and Uses. (amended 02.17.04)

1. An accessory building, structure or use shall not be located on a parcel unless there is a principal building,
structure, or use already located on the same parcel of land.

2. An accessory building or structure shall not be constructed prior to the commencement of construction of the
principal building or structure or the establishment of the principal use.

3. A building, structure or use which is accessory to a single-family dwelling and attached to it shall, for the
purposes of location and setbacks, be considered part of the principal building.

4. A building, structure or use which is accessory to a single-family dwelling and detached from it shall meet
the same front and side yard setback requirements as the principal structure, as set forth in the applicable
zoning district of this Ordinance. However, the minimum rear yard setback shall be ten (10) feet for all
detached accessory buildings. All accessory buildings and structures shall be included in the computation of
total maximum area of all accessory buildings, and together with the principal building or structure shall not
exceed the percentage of lot coverage requirements. (amended 07.16.18)

5. Detached accessory buildings or structures in non-residential districts shall conform to the height
requirements for the principal building or structure, as set forth in the applicable zoning district, except as
specifically permitted otherwise in this Ordinance. However, detached accessory buildings or structures in
non-residential districts that exceed the height of the principal building or structure, as constructed, shall not
be located in the front yard. (amended 07.16.18)

Detached accessory buildings or structures in residential districts shall not exceed the height of the principal
building or structure as constructed. However, the height of a detached accessory building or structure may
exceed the height of the principal building or structure, if said accessory building or structure is located at
least one hundred fifty (150) feet distant and to the rear of the principal building or structure. In no case shall
the height of a detached accessory building or structure exceed the maximum height requirement for the
principal building or structure, as set forth in the applicable zoning district, except as specifically permitted
otherwise in this Ordinance. (amended 07.16.18)
Article XXVII  

General Provisions  

27.05 Landscaping, Fences and Walls  

1. Location and Purpose. Entranceway structures shall be permitted in any required yard area for the purpose of indicating the entrance to a subdivision, multiple-family development, mobile home park, industrial park, office park, or similar planned development containing several buildings that are related in purpose.

Entranceway structures shall be subject to the provisions concerning corner clearance, set forth in Section 27.03.

2. Construction and Design. Any entranceway structure shall be constructed of permanent, durable materials and shall be designed so as to be compatible with the architecture of surrounding development.

3. Site Plan. Prior to issuance of a building permit for any entranceway structure, a site plan shall be submitted to the Planning Commission for review and approval. The site plan shall include an elevation drawing and a cross-section of the proposed structure. The site plan shall show the relationship of the entranceway to the right-of-way of the intersecting roads and/or driveways.

H. Residential Fence and Wall Regulations.

Where permitted or required in this Ordinance, fences and walls in residential districts shall be subject to the provisions set forth in this section:

1. Lot Enclosures. Fences and walls used to enclose a lot shall be no higher than four (4) feet in height and shall be located on the lot line.

2. Privacy or Decorative Fences and Walls. Fences and walls erected primarily for privacy or decoration shall not be located within any required yard setback area and shall not exceed six (6) feet in height.

3. Corner Clearance. No fences or walls shall be erected, established or maintained on any corner lot so as to obscure the view of drivers in vehicles approaching the intersection. All specifications concerning corner clearance as set forth in Section 27.03 shall be complied with.

4. Large Lots Excluded. Fences and walls shall be excluded from the provisions of this section if such lots have an area of more than two (2) acres, have frontage of at least two hundred (200) feet, and are not part of a recorded plat.

5. Fences Enclosing Public Areas. Fences, walls or other protective barriers that enclose parks, playgrounds, or other public landscaped areas shall not exceed ten (10) feet in height. The Planning Commission may authorize a fence, wall, or protective barrier of additional height, with or without barbed wire, where necessary, to protect public utility or municipal installations in a residential district.

6. Wall Specifications. Walls shall be erected on a concrete foundation which shall have a minimum depth of forty-two (42) inches below grade. The foundation shall be at least four (4) inches wider than the wall to be erected.

7. Fence Specifications. Fences constructed of chain link, wood, vinyl or other similar materials are permitted. Posts shall be sunk into the ground at least three (3) feet.

8. Barbed Wire Prohibited. Barbed wire, spikes, nails, or any other sharp-pointed intrusions shall be prohibited on top or on the sides of any fence, wall, or protective barrier, except that barbed wire cradles consisting of no more than three (3) strands of wire may be placed on top of fences enclosing public utility buildings.

Charter Township of Orion Zoning Ordinance 78  
Revised 05/21/20  
Page 27 - 35
The fire department has reviewed the 5 attached cases and has no concerns at this time.

Jeffrey Williams, CFPS – Fire Marshal
Orion Township Fire Department - Fire Prevention
3365 Gregory Road Lake Orion, MI 48359
Fax: 248.309.6993

From: Debra Walton <dwalton@oriontownship.org>
Sent: Monday, July 18, 2022 1:47 PM
To: Jeff Williams <jwilliams@oriontownship.org>
Subject: Residential ZBA Document for the August 8, 2022, ZBA Meeting

Attached are five ZBA residential cases that needs to be reviewed by you for the August 8, 2022, ZBA meeting.
MEMORANDUM

TO: Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Coordinator

DATE: October 4, 2022

SUBJECT: Staff Report for AB-2022-30, 31, and 32

ZBA Case AB-2022-30, Adam Martin, 2936 Saturn Dr.; Case AB-2022-31, Ken Backus; 2911 Walmsley Circle; and Case AB-2022-32, Mike Humbert, 2917 Walmsley Circle were postponed from the August 8, 2022 ZBA Meeting (Minutes Attached).

To date, the applicants have not provided any additional information.

Please contact me if you have any questions.
The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, August 8, 2022, at 7:00 pm at the Orion Township Municipality Complex Board Room, 2323 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:
Dan Durham, Chairman
Tony Cook, Vice-Chairman
Mike Flood, BOT Rep to ZBA
Don Walker, PC Rep to ZBA
Diane Dunaskiss, Board member

ZBA MEMBERS ABSENT:
None

CONSULTANT PRESENT:
David Goodloe, Building Official

OTHERS PRESENT:
Ted Adams
Christi Adams
Adam Martin
Lori Martin
Kenneth Backus
Mike Humbert
Catherine Bako
Kris Baker

1. OPEN MEETING
Chairman Durham called the meeting to order at 7:00 pm.

2. ROLL CALL

3. MINUTES

A. 07-25-22, ZBA Regular Meeting Minutes

Board member Dunaskiss moved, seconded by Chairman Durham, to approve the 07-25-2022 minutes as presented.

Roll Call Vote was as follows: Dunaskiss, yes; Cook, yes; Walker, yes; Flood, yes; Durham, yes. Motion passes 5-0.

4. AGENDA REVIEW AND APPROVAL.

Trustee Flood moved, seconded by Chairman Durham, to approve the agenda as presented.

Vote was as follows: Flood, yes; Walker, yes; Cook, yes; Dunaskiss, yes; Durham, yes. Motion passes 5-0.

5. ZBA BUSINESS

A. AB-2022-29, Theodore & Christi Adams, 2922 Saturn Dr., 09-20-453-023

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 4 variances from Zoning Ordinance #78 – Zoned R-2
Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Article XXVII, Section 27.17(B)
4. A 25-ft. wetland setback variance from the required 25-ft. to erect a 6-ft. privacy fence (structure) 0-ft. from a wetland.

Mr. Ted Adams and Christi Adams introduced themselves.

Chairman Durham stated that the Fire Department has no concerns with any of the cases on the agenda for tonight’s meeting. The Board received two letters. The first was from Mark Tarquini, 2823 Waring Place, Director of Keatington Homeowner’s Association, in support for the 6-foot height variance and the setback variances requested for the properties along Waldon Road and Chairman Durham listed all property addresses that the letter supports. The second letter was received from a neighbor expressing concerns and comments regarding the request for height and setback variances for fences along Waldon Road.

Mr. Adams summarized the variance request. They would like the 6-foot fence because of privacy and safety concerns.

Ms. Adams stated that when they purchased the home, they were told that a 6-foot fence was being paid for and put up by the Homeowner’s Association but after they moved it, they found out that this was false information. She explained what they have done up to this point to alleviate their concerns. They tried putting up a wood wall, but this was not effective. They also planted vegetation and the trees did not thrive and were not effective. When they heard about the fences that were placed on Baldwin Road, they thought this was their opportunity.

Chairman Durham asked if the traffic on Waldon Road has increased since they purchased the home.

Mr. Adams and Ms. Adams replied that it has definitely gotten busier, both traffic and pedestrian.

Ms. Adams expressed concerns over motorist stopping and trespassing on her property. People that walk along the path can see right into their home and a 4-foot fence could simply be looked over and would not provide privacy.

Chairman Durham asked how 2 more feet would help.

Ms. Adams replied that it would deter someone from hopping over the fence. If someone wanted to remove something from their property, it would be harder to take it over a 6-foot fence. When they have a 6-foot fence, it is more difficult to see a passing walker on the path.

Chairman Durham stated that he is concerned about a fence going into a wetland setback.

Mr. and Mrs. Adams explained that they have had individuals park and go onto their property to fish.
Trustee Flood asked if she had called the police.

Ms. Adams explained that she was afraid of repercussions.

Trustee Flood explained that the petitioner was actually asking for a site plan change because they are asking to replace a split rail fence that was part of the original site plan approval. He stated that they have a problem with 6 feet fences in the township. He thinks this is a Homeowner's Association problem.

Ms. Adams stated that there is a lot more truck traffic on the road now.

Trustee Flood commented on traffic problems on Baldwin Road. He reiterated that this is a Homeowner's Association problem because they are changing the site plan for the development. He thinks this should be worked out through planning and zoning.

Ms. Adams commented that they had listened to other meetings as to the fact that each was a case-by-case basis and she understood that this was the meeting that they should attend. She stated that for them to pay the money and then you say that they should go to the Homeowners Association, this does not seem fair.

Trustee Flood stated that he will base his decision on the practical difficulty. He believes that a 4-foot fence will suffice, and he explained.

Ms. Adams stated that the view is fine now, it is worse during the winter months.

Trustee Flood asked if the petitioner had informed the Homeowner’s Association about what is going on.

Ms. Adams stated that if someone comes down Waldon and enters the ice, they are supposed to call the Homeowner's Association.

Trustee Flood commented on beach access in the area. He is not in favor of any 6-foot fence in the Township.

Chairman Durham asked for public comment.

Mark Rossi stated that he was the first one that was approved for a fence on Waldon Road. This petitioner’s case is amplified because of their proximity to the lagoon. The security issue is huge. He commented in the changes in the Township over the years. This petitioner is worse than his case because they have constant traffic, sound, etc. The quality of life that is affected by the changes in the Township affect them more drastically. The four-foot fence will not suffice, and a 6-foot fence is more secure and he commented on the visual aspect of having a barrier. His quality of life has increased since he was able to put up the fence.

Ms. Adams stated that they are willing to work with the Township if there is a setback issue. There isn’t anything they can do about the water’s edge.

Mr. Adams commented on the large tree on his property and explained that he would like the fence to go on the side of the tree.

Chairman Durham asked if they have considered greenery.
Ms. Adams commented that they had planted 14 evergreens and 3 lived.

Chairman Durham asked if the trees withholding the sun belong to the petitioner.

Mr. Adams and Ms. Adams stated that they do not know.

Trustee Flood stated that it would depend on the road right of way on Waldon Road.

Board member Walker stated that they can have a 6-foot fence if they move it in.

Ms. Adams stated that they asked for the setbacks so the neighbor's fences and their fence would touch without a 10-foot gap. They understand that they can put a 6-foot fence 35 foot from Waldon Road, but they did not want to lose 35 feet.

Mr. Adams stated that that would probably be within their beach.

Board member Walker stated that he voted for Mr. Rossi’s fence but that was the last one. The problem is, they need a practical difficulty that goes with the land. He understands the changes that the Township has experienced but they would have to have to find practical difficulty with every case. He thinks this is the wrong solution. The right solution is to change the ordinance. He also is concerned with the wetland issue. They are asking for a variance against the wetland’s ordinance.

Ms. Adams stated that there is a split rail fence, and they want to put the 6-foot fence in the same location.

Chairman Durham asked Building Official Goodloe about the need to find practical difficulty with each case.

Building Official Goodloe stated that they are looking for unique circumstances that apply to the property.

Ms. Adams explained her concerns about someone drowning on her property and not being able to do anything about it.

Chairman Durham stated that how does the petitioner know where the people coming into their property are coming from.

Ms. Adams replied that they visually see the majority of them coming from Waldon Road.

Board member Dunaskiss asked if a berm could be built on the property line.

Building Official Goodloe replied yes, as long as it does not affect property drainage to adjacent properties.

Board member Dunaskiss asked if they could build a berm and put the 4-foot fence on top of the berm.

Building Official Goodloe answered yes.
Board member Dunaskiss stated that she shares the concern about the 6-foot fences. It is not the kind of look that is attractive in a community. She shares some of the same concerns with Trustee Flood. There are many trees on the property that are mature and not necessarily healthy and a lot of overgrowth preventing new greenery from being healthy. There is no point to keeping split rail fence. She suggested putting up a berm and putting a 4-foot fence on top and they could make it attractive. It would be safe and would help with visibility. She feels that this is a concern for the Homeowner’s Association, and they should share the burden. She asked if they could look at other alternatives and work with the Association to come up with a plan.

Ms. Adams stated that she can investigate this. Her practical difficulty is worse than Mr. Rossi. The Board is telling them one standard and then they are changing the meaning of practical difficulty.

Chairman Durham stated that they are looked at on a case-by-case basis. The former cases are approved. Each case should be looked at separately. He commented on the availability of coming on the property prior to tonight’s meeting and how that might not be possible with a stockade fence.

Board member Dunaskiss asked if a 4-foot fence would keep the people out of the wetland area.

Ms. Adams replied no.

Mr. Adams commented on what it would look like if he put up a berm and a 4-foot fence and the neighbors put up something different. In his opinion, this would not be appealing at all.

Building Official Goodloe stated that when you are dealing with dimensional variances, he read from a document from MSU. He stated that this document says, “if the circumstances upon which a variance is warranted is shared among numerous properties in the same zone, the variance request should be denied.” It is because it is not particular to that property. If they held the problem of noise to a standard, then everyone could qualify for a variance. This is a bigger issue for the subdivision. When the ZBA grants a variance, it stays with the property. Dogs and disputing neighbors are not a practical difficulty. If it what is being asked for is shared among all the neighbors along Waldon Road, it is not particular to one specific property.

Vice-chairman Cook stated that he is not a fan of 6-foot fences at all. He is trying to come up with a practical difficulty. After he heard what Building Official Goodloe read, it is a commonality among neighbors. When you add the wetland issue, there is a reason why we have a wetland ordinance. He is trying to find a reason why this is unique and is not able to.

Mr. Adams stated that they are the only one along Waldon Road that someone can walk on the property and drown.

Chairman Durham stated that this is a blanket request from several residents. Mr. Adams brought up the issue of being on the water. He suggested that anyone looking to get an ordinance change can make a presentation to the Township Board.

Trustee Flood stated that right now they have a committee that is supposed to be addressing this problem.

Building Official Goodloe stated that anyone can apply at the Clerk’s Office to amend an ordinance. There is an application for that.
Ms. Adams asked who decides how that happens.

Trustee Flood replied the Township Board.

Chairman Durham explained the options to the petitioners.

Mr. Adams stated that he is okay coming back 5 feet, but he cannot do that at the water’s edge.

Chairman Durham stated that this would require them to ask to be postponed and come back to the Board with different measurements and drawing and try again.

Building Official Goodloe stated that they could request a lesser variance.

Chairman Durham commented that they would not be able to provide hard numbers at tonight’s meeting in moving the fence 5 feet.

Board member Walker stated that if the petitioner agrees to move their fence in and the neighbors did not agree to move their fence in, the fences will not line up. They have to think about what it would look like overall.

Building Official Goodloe stated that this is exactly why this is not unique to this property, it also involves the neighbors.

Trustee Flood stated that tomorrow, the petitioners could put a 4-foot line all the way down their property line along Waldon Road and it would be perfectly legal. It is the homeowner’s choice.

Building Official Goodloe stated that he would have to review the wetland area because this is different.

Trustee Flood stated that the Township already has one there. If someone climbs over the fence, that is their fault.

Board member Walker commented that he did not know a resident could fill out a form to change the ordinance, he has never heard of that.

Trustee Flood stated that for anything to be put on a Township Board Agenda, it must be approved.

Board member Walker asked if this item has come before the Board before.

Building Official Goodloe commented on another ordinance amendment that went before the Board.

Trustee Flood stated that they are working to get the Committee back together to get this resolved. The way the ordinance is set up now, if they have two front yards, it is 35 feet setback for this case. The Homeowner’s Association needs to address this. If they get denied, they have recourse to go to Oakland County Circuit Court.

Chairman Durham asked for additional public comment.
Mr. Ken Backus commented on his history of living in the Township. He lives across the canal from the petitioner. He is in favor of the things that the petitioner has presented. He commented on the big trucks that unload at Kroger and that could be a reason for a 6-foot fence. If he had a taller fence, which would reduce the sound being heard. He suggested that if they survey random residents in a mile radius and ask them about the attractiveness of the fences on Baldwin as compared to the fences along Waldon Road. He believes the fences on Baldwin Road are much more attractive.

Mr. Adam Martin, neighbor, pointed out that the petitioner has an attractive nuisance. People that drive down the road and they see access to the water. The unique detriment that the petitioner has is that it is so easy and inviting for individuals to feel that they have access to that space. It is not known that this is personal property, so people assume that it is public property. Out of all the fence cases, theirs is the most unique.

Ms. Adams stated that they cannot put a berm along the wetlands because it would be an EGLE issue.

Chairman Durham asked for final comments.

Mr. Adams asked for a vote on what was presented.

Ms. Adams stated that their unique hardship is people are able to come onto their property and access the water.

Board member Walker moved, and Vice-chairman Cook supported, in the matter of ZBA Case AB-2022-29, Theodore & Christi Adams, 2922 Saturn Dr., 09-20-453-023 that the petitioner’s request for variances from Article XXVI, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2) including a 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.; a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east; a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west and a variance from Article XXVII, Section 27.17(B) for a 25-ft. wetland setback variance from the required 25-ft. to erect a 6-ft. privacy fence (structure) 0-ft. from a wetland be denied because the petitioner did not demonstrate that the following standards for variances have been met:

The petitioner did not demonstrate practical difficulty in that from the discussions we had with the petitioner, these concerns that the petitioner has does not run, with the possible exception of the water issue. The issues of noise, too many people and trespassing are issues that are known everywhere and all of these things apply to all residents of the Township. It is not practical difficulty due to ownership of that particular property.

Roll call vote was as follows: Dunaskiss, yes; Cook, yes; Walker, yes; Flood, yes; Durham, yes. Motion passes 5-0.

B. AB-2022-30, Adam Martin, 2936 Saturn Dr., 09-20-453-024

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2
Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05 (H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Mr. Martin introduced himself and summarized the variance request. He would like to postpone his case so he could come up with a practical difficulty.

**Trustee Flood moved, and Chairman Durham supported, at the applicant’s request to postpone ZBA Case AB-2022-30, Adam Martin, 2936 Saturn Drive, 09-20-453-024, to October 10, 2022.**

Roll call vote was as follows: Walker, yes; Dunaskiss, yes; Flood, yes; Cook, yes; Durham, yes. Motion passes 5-0.

Mr. Pat Kaputo stated that he has vegetation along his property and commented that this vegetation is very difficult to maintain. The practical difficulty argument makes no sense, and it makes perfect sense for these residents. It is only a very small percentage of residents of Orion Township who live along Waldon Road. He commented on the increased traffic in the area, the shopping center that was not there when they moved in, the roundabout, and the church. He commented on the weeds along the safety path. He commented on other neighbors that have come before the Board for a fence. The Board doesn't understand how this affects these neighbors’ everyday lives. The Township needs to take care of things in a timely manner.

Chairman Durham stated that practical difficulty is part of the Enabling Legislation.

Mr. Kaputo answered that he is aware, but he questioned the definition of it that the Board is using. He commented on the garbage behind Kroger. He urged the Board to listen to the petitioners.

**C. AB-2022-31, Ken Backus, 2911 Walmsley Circle Dr., 09-20-452-013**

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. rear yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Mr. Ken Backus introduced himself.

Chairman Durham explained the options for the petitioner.

Trustee Flood asked if the Homeowner’s Association will address this. The fences are the Association’s boundary lines and are the Homeowners Association’s problem.
Board member Dunaskiss moved, and Trustee Flood supported, in the matter of ZBA Case AB-2022-31, Ken Backus, 2911 Walmsley Circle Dr., 09-20-452-013 that this request, at the petitioner's request, be postponed until October 10, 2022.

Roll call vote was as follows: Flood, yes; Walker, yes; Cook, yes; Dunaskiss, yes; Durham, yes. Motion passes 5-0.

D. AB-2022-32, Mike Humbert, 2917 Walmsley Circle Dr., 09-20-452-012

Chairman Durham read the petitioner's request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Mr. Mike Humbert introduced himself to the Board and asked for postponement of his case.

Trustee Flood moved, and Board member Dunaskiss supported, in the matter of ZBA Case AB 2022-32, B-2022-32, Mike Humbert, 2917 Walmsley Circle Dr., 09-20-452-012 at the applicant's request to postpone this case until October 10, 2022.

Roll call vote was as follows: Cook, yes; Dunaskiss, yes; Walker, yes; Flood, yes; Durham, yes. Motion passes 5-0.

Chairman Durham urged petitioners that were postponed at tonight’s meeting, come back to the next meeting with some new information. They can contact the Township, Building Department and he asked them to use the time they were given to research new information.

Building Official Goodloe stated that he would gladly meet with any of the petitioners to look for their practical difficulty.

E. AB-2022-33, Catherine Baker, 2933 Walmsley Circle Dr., 09-20-381-004

Chairman Durham read the petitioner's request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.
Ms. Catherine Baker introduced herself and her son to the Board. She provided pictures to the Board. She stated that a lot of her concerns involve privacy so anyone can see into their yard. A 4-foot fence doesn’t work. She likes the idea of vegetation, but it is a lot to keep up and things die off. She described the existing vegetation in her yard and the road right of way. She described safety concerns and privacy concerns that she has for her property. She doesn’t understand why the fence is such an issue.

Chairman Durham stated that the 6-foot fence is prohibited by ordinance.

Trustee Flood stated that they can put up a 6-foot fence, 35 feet off the lot line.

Ms. Baker replied that they wouldn’t have any back yard left.

Mr. Baker stated that this is why they are asking for the variance.

Trustee Flood stated that this is why the ordinance needs to be addressed.

Mr. Baker stated that the Board has the power to approve the variance so therefore, they are trying to push it on someone else.

Chairman Durham asked for public comment.

Mr. Rossi stated that the rules have changed since he was approved. They have people that have received approval along Baldwin Road and now everything has changed on how the Board is looking at it. He suggested that the Board work on what they want from the Homeowner’s Association so that they can present it to the President and try to get it done. The Association is not concerned with the perimeter of the property that involves a small percentage of people in the development.

Trustee Flood asked if they should contact Building Official Goodloe.

Building Official Goodloe stated that they should talk to Tammy Girling, Planning and Zoning Director, to find out if it was a PUD or a site plan for this development. They need to find out if the development would consider putting a fence around the perimeter.

Trustee Flood commented that hopefully they can work this out without getting lawyers involved.

Ms. Adams stated that she watched the videos of the people who got approved for the fences. Vice-chairman Cook suggested that they get a group together for conformity. She surveyed the group and got the neighbors together and now she feels responsible for all the monies spent. She felt that they were doing what they were supposed to do and now they are telling them to do something different. Something should have been said before all the time and money was wasted.

Ms. Baker explained how she decided to go to the Board for a variance. She reiterated her concerns about safety and privacy.

Building Official Goodloe stated that having two front yards can be considered a practical difficulty. He stated that 10 foot is the minimum setback off a regular rear yard. He suggested she think about this and the topography of the yard when appealing to this Board. He suggested that they look for a compromise.

Ms. Baker explained her property difficulties.

Building Official Goodloe suggested that the petitioner put this all together and come back. None of the practical difficulties were on the application. He suggested that the petitioner look at the uniqueness of their properties.
Building Official Goodloe suggested that the applicants read the minutes from the meetings where the fences were approved. This Board can only look at what they are presented in the application and what they are presenting here. The Board can only vote on what goes with the land.

Chairman Durham explained the options to the applicant.

Ms. Baker explained all the effort that she has put in so far. She does not want to postpone.

Vice-chairman Cook asked what she has done in terms of planting vegetation.

Ms. Baker stated that she planted 10 of the emeralds and all of them died. She explained the problems with the vegetation in her yard.

Mr. Baker explained that the Black Walnut trees on the other side release a toxin inhibiting other plants to grow so it is impossible to get things to grow on that side.

Trustee Flood asked who owns the road right of way.

Building Official Goodloe replied that he doesn’t know.

Trustee Flood stated that he would like clarification. He believes that it is an Oakland County right of way.

Ms. Baker expressed her concern about the vegetation in the road right of way. She reiterated her privacy and safety concerns. She does not think a 4-foot fence is sufficient.

Chairman Durham asked for public comment.

Mr. Kaputo commented on the vegetation in the area and the pathways in the area. He commented on the neighborhood plan and the visibility of the subject parcel.

Ms. Baker reiterated her safety concerns.

Mr. Baker reiterated why a 4-foot fence would not help with their privacy concerns.

Board member Dunaskiss moved, and Vice-chairman Cook supported, in the matter of ZBA Case AB-2022-33, Catherine Baker, 2933 Walmsley Circle Dr., 09-20-381-004 that the petitioner’s request for 3 variances from Zoning Ordinance #78 – Zoned R-2, Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2) including a 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd., a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east and a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west be denied because the petitioner did not demonstrate that the following standards for variance have been met in this case:

1. The petitioner did not demonstrate that there is a practical difficulty existing that is different from those in the zoning and area in which they reside.

2. The petitioner did not demonstrate exceptional or extraordinary circumstances or conditions that apply to the property involved.

3. The variances are not necessary for the preservation and enjoyment of a substantial property right possessed by others in the same zoning or vicinity.

Roll call vote was as follows: Dunaskiss, yes; Cook, yes; Flood, yes; Walker, yes; Durham, yes. Motion passes 5-0.
6. **PUBLIC COMMENTS**

Mr. Michael Humbert commented that if he put a pool in his backyard, he would have to put up a 6-foot fence. This is a money issue.

7. **COMMUNICATIONS**

Trustee Flood commented on the activity of the Fencing Ad-Hoc Committee.

8. **COMMITTEE REPORTS**

9. **MEMBER COMMENTS**

Board member Walker urged residents to fill out the form to get this issue on the Township Board agenda.

Trustee Flood stated that it was one year ago in July 2021 when they held a joint meeting to address this problem. They wanted a six-month moratorium on new fences to get this resolved and they were denied.

Board member Dunaskiss commented that these requests are coming in more frequently, but they are bound by the rules too. This is a bigger problem, and she hopes that they address it.

Vice-chairman Cook commented that they do not change the rules. They have a set of parameters and they are consistent. They also go out and look at the properties. There are things going on the end of the Township and they need to do something to force their hand.

Chairman Durham thanked the Board for their support. The Board uses good judgement. Residents need to understand that the Board is bound by rules, things they must do and things that they look at in a certain way. He explained the Board’s role in the Township. The situation is only going to be changed by some different rules. As a group, they can speak louder than as an individual. The Board does the best job they can.

Board member Dunaskiss concurred with Chairman Durham. This area of Waldon Road has a great need. They should come together as a group and work together with other agencies to bring about positive change.

10. **ADJOURNMENT**

Moved by Trustee Flood, seconded by Chairman Durham, to adjourn the meeting at 9:17 pm.

Motion Carried (5-0)

Respectfully submitted,

Erin A. Mattice
Recording Secretary
MOTION OPTIONS

TO: Charter Township of Orion Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Specialist

DATE: July 28, 2022

RE: AB-2022-32, Mike Humbert, 2917 Walmsley Circle Dr., 09-20-452-012.

I am providing motion options for the above-mentioned case.

Please consider and deliberate on each of the criteria listed which the applicant should meet in order for their request to be approved. These are known as the Findings of Fact and need to be included in a motion for either approval or denial. Any additional Findings of Facts should be added to the motion. Also, if more information is needed, a motion to postpone would be in order.

The variance language listed was advertised to the public. As a reminder - due to the language being advertised, the ZBA may lessen the requested deviation(s) but cannot grant more than what was advertised.

** If motion is to approve, conditions can be added to the motion if appropriate. If the variances are modified, use the modified numbers in the motion. **

If you have any questions regarding the case, please give me a call at the Township ext. 5001.
In the matter of ZBA case # **AB-2022-32, Mike Humbert, 2917 Walmsley Circle Dr., 09-20-452-012**, I move that the petitioner’s request for:

3 variances from Zoning Ordinance 78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

be **granted** because the petitioner did demonstrate that the following standards for variances have been met in this case in that they set forth facts which show that in this case:

Please be specific how the petitioner meets these criteria

1. The petitioner does show the following Practical Difficulty *(Defined: Due to unique characteristics of the property and not related to general conditions in the area of the property):*

2. The following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone:

3. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts:
4. The granting of the variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following findings:

Further, based on the following findings of facts, the granting of this variance would not:

1. Impair an adequate supply of light and air to adjacent property due to:

2. Unreasonably increase the congestion in public streets due to:

3. Increase the danger of fire or endanger the public safety due to:

4. Unreasonably diminish or impair established property values within the surrounding area due to:

5. Or, in any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to:
SAMPLE MOTION FOR

DENIAL OF A NON-USE VARIANCE

In the matter of ZBA case # AB-2022-32, Mike Humbert, 2917 Walmsley Circle Dr., 09-20-452-012, I move that the petitioner’s request for:

3 variances from Zoning Ordinance 78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.

2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.

3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Please be specific how the petitioner does not meet these criteria be denied because the petitioner did not demonstrate that the following standards for variances have been met in this case:

1. The petitioner did not demonstrate Practical Difficulty because:

2. The petitioner did not establish unique or exceptional circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zoning because:

3. The variance is not necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts:
4. The granting of the variance or modification will be materially detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following findings:

Further, based on the following findings of facts, the granting of this variance would:

1. Impair an adequate supply of light and air to adjacent property due to:

2. Unreasonably increase the congestion in public streets due to:

3. Increase the danger of fire or endanger the public safety due to:

4. Unreasonably diminish or impair established property values within the surrounding area due to:

5. Or, in any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to:
NOTICE TO APPLICANT:
The following application must be completed and filed with the Township at least thirty days prior to a scheduled ZBA meeting in order to initiate an appeal. There is a non-refundable fee of $250.00 for a residential application.

Regular meetings of the ZBA are held on the second and fourth Mondays of each month at 7:00 p.m. at the Orion Township Hall, 2323 Joslyn Road, Lake Orion, Michigan 48360. A minimum of three cases are required in order to hold a meeting with a maximum of five. The applicant or a representative with written permission from the property owner must be present at the meeting.

PROOF OF OWNERSHIP MUST BE INCLUDED WITH THIS APPLICATION. Acceptable forms of documentation include: Warranty Deed, Quit Claim Deed, Land Contract, or Option to Purchase with a Copy of the Warranty Deed.

APPLICANT
Name: Mike Humbert
Address: 2917 Walmsley Circle Dr.   City/State/Zip: Lake Orion, MI 48360
Phone: 248.842.8793   Cell: 248.842.8793   Fax: 
Email: kurgen54@gmail.com

PROPERTY OWNER(S)
Name(s): Sheila Humbert
Address: 2917 Walmsley Circle Dr.   City/State/Zip: Lake Orion, MI 48360
Phone: Cell: 248.842.8793   Fax: 
Email: kurgen54@gmail.com

CONTACT PERSON FOR THIS REQUEST
Name: Mike Humbert   Phone: 248.842.8793   Email: kurgen54@gmail.com

SUBJECT PROPERTY
Address: 2917 Walmsley Circle Dr., Lake Orion, MI 48360   Sidwell Number: 09-20-452-012
Total Acreage: .37 Acres   Length of Ownership by Current Property Owner: Years, Months
Does the owner have control over any properties adjoining this site? NO
Zoning Ordinance Allowance/Requirement variance for fence to be 0 feet from rear property line
Deviation requested 10 feet
1. Describe in detail the nature of the request.

I would like to install a 6-foot shadow box fence along the back of the property line only (NOT along the side). 4-foot fences are already allowed.

2. Describe how the request results from special or unique circumstances particular to the property, which are not applicable to other properties in the surrounding area.

Our security, visual, & access privacy as well as the noise level from the increased pedestrian & vehicle traffic resulting from township growth & the new round-abouts has severely diminished our safety and the quality of life in our backyard. Kids trespass through our yard.

3. If the appeal is granted, please explain how the variance will/will not be materially detrimental to the public health, safety and welfare, or to other properties or improvements in the Township:

As mentioned above, it will improve our "health, safety, and well being" and in no way will an additional 2' be detrimental to the surrounding properties or improvements in the neighborhood or township. The exact same fence will be installed by the same fence company as what was installed on Baldwin Rd.

4. Explain how the request is/is not consistent with other properties in the immediate area, please site examples if possible:

This request is a result of the ongoing changes we are seeing along Waldon Road in a relatively short period of time. Our fence will be consistent with those already installed on Baldwin Road in Keatington.

5. Describe how the alleged practical difficulty has not been self-created.

The "difficulty" is in no way the cause of something we did. It is a result of the growth on Waldon Rd, and new development in the surrounding areas, as well as the ever increasing use of the path.

6. The topography of said land makes the setbacks impossible to meet because: N/A

7. Describe how strict compliance with the ordinance unreasonably prevents the owner from using the property for a permitted purpose, or to be unnecessarily burdensome.

Our "Quality Of Life" and safety is compromised by the constant noise, visual disturbance and security concerns. We cannot enjoy our backyard. There is no barrier that prevents anyone from trespassing from the safety path and entering our backyard. This would help minimize the amount of traffic noise we hear while trying to enjoy our backyard. A 6' fence is a better deterrent for climbing & theft.
Case #: ______________________

8. Have there been any previous appeals involving this property? If so, when? No

9. Is this request the result of a Notice of Ordinance Violation? □ Yes ✗ No

I/We, the undersigned, do hereby request action by the ZBA on the variance or specified matter above, in accordance with Sections 30.06, 30.07, 30.08, 30.10, and 30.11 of the Zoning Ordinance. In support of this request the above facts are provided. I hereby certify that the information provided is accurate and the application that has been provided is complete. As the property owner (or having been granted permission to represent the owner as to this application), I hereby grant the Zoning Board of Appeals members permission to visit the property, without prior notification, as is deemed necessary.

Signature of Applicant: __________________________ Date: 06/21/2022

Print Name: Mike Humbert

Signature of Property Owner: ______________________ Date: 06/21/2022

Print Name: Mike Humbert

If applicable:
I, the property owner, hereby give permission to __________________________ to represent me at the meeting.

OFFICE USE ONLY

Zoning Classification of property: __________________ Adjacent Zoning: N. S. E. W.

Total Square Footage of Principal Structure: ____________ Total Square Footage of Accessory Structure(s): ____________

Description of variance(s): ____________________________

__________________________
__________________________

Date Filed: ____________ Fee Paid: ____________ Receipt Number: ____________

Page 4 of 4
Article XXVII

General Provisions

27.05 Landscaping, Fences and Walls

1. Location and Purpose. Entranceway structures shall be permitted in any required yard area for the purpose of indicating the entrance to a subdivision, multiple-family development, mobile home park, industrial park, office park, or similar planned development containing several buildings that are related in purpose.

Entranceway structures shall be subject to the provisions concerning corner clearance, set forth in Section 27.03.

2. Construction and Design. Any entranceway structure shall be constructed of permanent, durable materials and shall be designed so as to be compatible with the architecture of surrounding development.

3. Site Plan. Prior to issuance of a building permit for any entranceway structure, a site plan shall be submitted to the Planning Commission for review and approval. The site plan shall include an elevation drawing and a cross-section of the proposed structure. The site plan shall show the relationship of the entranceway to the right-of-way of the intersecting roads and/or driveways.

H. Residential Fence and Wall Regulations.

Where permitted or required in this Ordinance, fences and walls in residential districts shall be subject to the provisions set forth in this section:

1. Lot Enclosures. Fences and walls used to enclose a lot shall be no higher than four (4) feet in height and shall be located on the lot line.

2. Privacy or Decorative Fences and Walls. Fences and walls erected primarily for privacy or decoration shall not be located within any required yard setback area and shall not exceed six (6) feet in height.

3. Corner Clearance. No fences or walls shall be erected, established or maintained on any corner lot so as to obscure the view of drivers in vehicles approaching the intersection. All specifications concerning corner clearance as set forth in Section 27.03 shall be complied with.

4. Large Lots Excluded. Fences and walls shall be excluded from the provisions of this section if such lots have an area of more than two (2) acres, have frontage of at least two hundred (200) feet, and are not part of a recorded plat.

5. Fences Enclosing Public Areas. Fences, walls or other protective barriers that enclose parks, playgrounds, or other public landscaped areas shall not exceed ten (10) feet in height. The Planning Commission may authorize a fence, wall, or protective barrier of additional height, with or without barbed wire, where necessary, to protect public utility or municipal installations in a residential district.

6. Wall Specifications. Walls shall be erected on a concrete foundation which shall have a minimum depth of forty-two (42) inches below grade. The foundation shall be at least four (4) inches wider than the wall to be erected.

7. Fence Specifications. Fences constructed of chain link, wood, vinyl or other similar materials are permitted. Posts shall be sunk into the ground at least three (3) feet.

8. Barbed Wire Prohibited. Barbed wire, spikes, nails, or any other sharp-pointed intrusions shall be prohibited on top or on the sides of any fence, wall, or protective barrier, except that barbed wire cradles consisting of no more than three (3) strands of wire may be placed on top of fences enclosing public utility buildings.
construction on the rebuilding project is begun and diligently carried on within a reasonable time after the excavation, demolition, or removal of the theretofore existing building.

K. Administrative Nonconformities.

A structure or use which is administratively nonconforming shall remain nonconforming until special approval has been granted pursuant to application submitted to the proper authority. Where special approval has been granted, such a structure or use shall be deemed conforming. However, where special approval has been denied, such structure or use shall be considered nonconforming on the basis for which the application for special approval was denied.

L. Change in Tenancy or Ownership.

In the event there is a change in tenancy, ownership or management of an existing nonconforming use or structure, such nonconforming use or structure shall be allowed to continue pursuant to the terms of this Ordinance regarding such nonconformities.

M. Special Exceptions.

Any use for which a special exception is permitted, as provided in this Ordinance, shall not be deemed a nonconformity.

Section 27.02 -- Buildings, Structures, and Uses

A. Accessory Buildings, Structures and Uses. (amended 02.17.04)

1. An accessory building, structure or use shall not be located on a parcel unless there is a principal building, structure, or use already located on the same parcel of land.

2. An accessory building or structure shall not be constructed prior to the commencement of construction of the principal building or structure or the establishment of the principal use.

3. A building, structure or use which is accessory to a single-family dwelling and attached to it shall, for the purposes of location and setbacks, be considered part of the principal building.

4. A building, structure or use which is accessory to a single-family dwelling and detached from it shall meet the same front and side yard setback requirements as the principal structure, as set forth in the applicable zoning district of this Ordinance. However, the minimum rear yard setback shall be ten (10) feet for all detached accessory buildings. All accessory buildings and structures shall be included in the computation of total maximum area of all accessory buildings, and together with the principal building or structure shall not exceed the percentage of lot coverage requirements. (amended 07.16.18)

5. Detached accessory buildings or structures in non-residential districts shall conform to the height requirements for the principal building or structure, as set forth in the applicable zoning district, except as specifically permitted otherwise in this Ordinance. However, detached accessory buildings or structures in non-residential districts that exceed the height of the principal building or structure, as constructed, shall not be located in the front yard. (amended 07.16.18)

Detached accessory buildings or structures in residential districts shall not exceed the height of the principal building or structure as constructed. However, the height of a detached accessory building or structure may exceed the height of the principal building or structure, if said accessory building or structure is located at least one hundred fifty (150) feet distant and to the rear of the principal building or structure. In no case shall the height of a detached accessory building or structure exceed the maximum height requirement for the principal building or structure, as set forth in the applicable zoning district, except as specifically permitted otherwise in this Ordinance. (amended 07.16.18)
**KEATINGTON HOME OWNERS' ASSOCIATION**

P.O. BOX 143 - LAKE ORION, MICH. 48361

Date: 06/01/2022

KHA-Architectural Control Committee

Proposal submitted by:

Name: Mike Humbert

Address: 2917 Walmsley Circle, Lake Orion, MI 48360

Phone: 248.842.8793

Proposal:

Install shadow box fencing on the lot line along Waldon Rd. ONLY, at the back of my property (not between houses). We will use the same fence already approved and installed along Baldwin Road.

<table>
<thead>
<tr>
<th>Action of Committee:</th>
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<tbody>
<tr>
<td>✓ Accept Proposal as Submitted</td>
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<tr>
<td>Accept Proposal with Exceptions as Noted</td>
</tr>
<tr>
<td>Proposal Incomplete - Requires Additional Information - See Below</td>
</tr>
<tr>
<td>Reject Proposal - Against Township Zoning Regulations - See Below</td>
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<tr>
<td>Reject Proposal - Against Subdivision Deed Restrictions - See Below</td>
</tr>
<tr>
<td>Other - See Below</td>
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</tbody>
</table>

Explanation of Action:

The height is restricted to 48" per the Township Ordinance. The KHA has approved a 6' shadow box fence if the Township also agrees and approves the variance.

Action of committee does not imply compliance with Municipal and Building Regulations. Said regulations should be checked prior to construction.

For a Better Community
KHA-Architectural Control Committee

By: [Signature]

KHA ACC Chairperson
Debra Walton

From: Jeff Williams  
Sent: Tuesday, July 19, 2022 9:55 AM  
To: Debra Walton  
Cc: Robert Duke; John Pender  
Subject: RE: Residential ZBA Document for the August 8, 2022, ZBA Meeting

The fire department has reviewed the 5 attached cases and has no concerns at this time.

Jeffrey Williams, CFPS – Fire Marshal  
Orion Township Fire Department - Fire Prevention  
3365 Gregory Road Lake Orion, MI 48359  
Fax: 248.309.6993

From: Debra Walton <dwalton@oriontownship.org>  
Sent: Monday, July 18, 2022 1:47 PM  
To: Jeff Williams <jwilliams@oriontownship.org>  
Subject: Residential ZBA Document for the August 8, 2022, ZBA Meeting

Attached are five ZBA residential cases that needs to be reviewed by you for the August 8, 2022, ZBA meeting.

Debra Walton  
Clerk  
Planning & Zoning  
2323 Joslyn Road, Lake Orion, MI 48360  
O: 248.391.0304, ext. 5002  
W: www.oriontownship.org